

2000

# Cory Dunn v. Valerie Dunn : Brief of Appellant

Utah Court of Appeals

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John Walsh; Attorney for Appellant.

Valerie Dunn; Pro Se.

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IN THE UTAH COURT OF APPEALS

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CORY DUNN,	;	
		DISTRICT COURT NO. 984901556
Petitioner/Appellant	;	
vs.	;	APPELLATE CASE NO. 20000399-CA
VALERIE DUNN.	;	
		PRIORITY NO. FOUR
Respondent/ Appellee.	;	

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BRIEF OF THE APPELLANT

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APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR WEBER COUNTY

STATE OF UTAH

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HONORABLE PARLEY R. BALDWIN

PRESIDING

---

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**FILED**  
Utah Court of Appeals

DEC 22 2000

Paulette Stagg  
Clerk of the Court

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	i
STATEMENT SHOWING JURIDICITION.....	ii
STATEMENT OF THE ISSUES.....	ii
DETERMINIIVE LAW.....	iii
STATEMENT OF THE CASE.....	iii
NATURE OF THE CASE.....	iv
COURSE OF PROCEEDINGS.....	iv
DISPOSITION AT TRIAL COURT.....	iv
STATEMENT OF THE FACTS.....	1
<b>SUMMARY</b> OF THE ARGUMENT.....	3
ARGUMENT ONE.....	3
ARGUMENT TWO.....	10
ARGUMENT THREE.....	20
ARGUMENT FOUR.....	26
ARGUMENT FIVE.....	30
SUMMARY.....	46
CONCLUSION AND RELIEF SOUGHT.....	50
CERTIFICATE OF MAILING.....	51

## TABLE OF AUTHORITIES

### TABLE OF CASES

<u>Ashton vs. Ashton</u> , 733 P.2d 147, (Utah 1987) . . . . .	31
<u>Davis vs. Davis</u> , 749 P.2d 647, 648 (Utah, 1988) . . . . .	.iii, 31
<u>Allred vs. Brown</u> 893 P.2d 1087 (Utah App. 1995). . . . .	.ii, iii, 2
<u>Darrell J. Dikerickson &amp; Sons, Inc. vs. Magna Water and Sewer Improvement District</u> , 613 P.2d 116 (Utah, 1980). . . . .	.ii, iii
<u>Deeben vs. Deeben</u> , 106 Utah Adv. Rep. 55 (Utah App. 1989) . . . . .	29
<u>Elmer vs. Elmer</u> , 107 Utah Adv. Rep 37 (Ut. 1989) . . . . .	20, 30, 47
<u>Hudema vs. Carpenter</u> , 989 P.2d 949 (Utah App. 1999) . . . . .	29, 31
<u>Hutchison vs. Hutchison</u> , 649 P.2d 38, (Utah 1982) . . . . .	25, 29
<u>Paryzek vs. Paryzek</u> , 776 P.2d 78 (Utah App. 1989) . . . . .	20, 46
<u>Peterson vs. Peterson</u> , 818 P.2d 1035 (Utah App. 1991) . . . . .	31
<u>Schindler vs. Schindler</u> , 776 P.2d 84 (Utah App. 1989) . . . . .	29
<u>State vs. Walker</u> , p.2d 191, 193 (Utah, 1987) . . . . .	31
<u>Tucker vs. Tucker</u> , 910 P.2d 102, (Utah, 1996) . . . . .	29

### UTAH CODE ANNOTATED

§30-3-10 . . . . .	iii
§78-2a-3(2)(h) . . . . .	iii

### UTAH RULES OF CIVIL PROCEDURE

Utah R. Civ. P. 52(a) . . . . .	3
---------------------------------	---



## **STATEMENT SHOWING JURISDICTION**

The Court of Appeals has original jurisdiction in this matter pursuant to §78-2a-3(2)(h) of the Utah Code Annotated as amended in 1996.

## **STATEMENT OF THE ISSUES**

ARGUMENT ONE: THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY WHEN IT COMPLETELY OVERLOOKED THE CHILD CUSTODY EVALUATION.

STANDARD OF REVIEW: Questions of Law are determined by the Appellate Court as a matter of correctness, with no presumption of validity in the determination made by the Lower Court Darrell J. Dikerickson & Sons, Inc. vs. Magna Water and Sewer Improvement District 613 P.2d 116 (Utah, 1980) The Custody Evaluation was presented to the Court as noted at page 238 of the Record.

ARGUMENT TWO: THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY WHEN IT COMPLETELY IGNORED THE ACTIONS OF THE PARTIES FOR A SEVENTEEN MONTHS PRIOR TO TRIAL.

STANDARD OF REVIEW: Questions of Law are determined by the Appellate Court as a matter of correctness, with no presumption of validity in the determination made by the Lower Court Darrell J. Dikerickson & Sons, Inc. vs. Magna Water and Sewer Improvement District 613 P.2d 116 (Utah, 1980) This issue was raised throughout the trial and particularly between pages 36 to 14 of the Transcript.

ARGUMENT THREE: THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY WHEN IT CONCLUDED THAT THE PARTIES CHILD SHAE'S CONDITION WAS NOT SEVERE.

STANDARD OF REVIEW: Questions of weight of the evidence is presumed correct with broad discretion afforded the Lower Court. Allred vs. Brown, 893 P.2d 1087 (Utah App. 1995). This issue was raised throughout the trial and particularly at pages 172, 222, and 235 of the Transcript.

ARGUMENT FOUR: THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY WHEN IT REMOVED THE CHILDREN TO CALIFORNIA.

STANDARD OF REVIEW: Discretionary calls by the Lower Court are presumed correct with a broad discretion afforded the Lower Court Allred vs. Brown 893 P.2d 1087 (Utah App. 1995). This issue is considered throughout the evaluation which was presented to the Court at page 238 of the record.

ARGUMENT FIVE: THE LOWER COURT ERRED WHEN NOT AWARDING PETITIONER CUSTODY WHEN IT FOUND THAT VALERIE DUNN HAD BEEN THE PRIMARY CARE GIVER

STANDARD OF REVIEW: The Lower Court ignored the last seventeen months prior to trial, which was an error of law, reviewed for correction with no presumption of validity. Darrell J. Dikerickson & Sons, Inc. vs. Magna Water and Sewer Improvement District 613 P.2d 116 (Utah, 1980)

As to the Finding itself the standard of review requires the Appellant to marshal all of the evidence that supports finding and then show how the same was an abuse of discretion by the Lower Court. Davis vs. Davis 749 P.2d 647 (Utah, 1988). This issue was raised in the Lower Court throughout but particularly beginning at page 36 to 288 of the Transcript.

**DETERMINITIVE LAW**

30-3-10 Custody of children incase of separation or divorce – Custody consideration

- (1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the minor child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding future custody or visitation schedules, but the expressed desires are not controlling and the court may determine the children's custody or visitation otherwise. Interviews with the children may be conducted by the judge in camera only with the prior consent of the parties.
- (2) In awarding custody, the court shall consider among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

**STATEMENT OF THE CASE**

This is an appeal to the Utah Court of Appeals from the Second Judicial District Court in

and for Weber County, State of Utah, the Honorable Parley R. Baldwin Presiding, regarding the granting of custody to the Respondent/Appellee.

### **NATURE OF THE CASE**

This case is a case involving custody and the determination of the primary care given and the continuation of a custody arrangement that came into place by stipulation, in open court with the assistance of counsel, where the children are in special need of specialized education and receiving the same in a setting where it is undisputed that they are thriving, happy and very well adjusted.

### **COURSE OF PROCEEDINGS**

This matter was filed in July, 1998. A Temporary Restraining Order was issued and then the parties stipulated to a custody arrangement that was in place until trial in December 1999. The Court sitting without a jury, decided to remove the children from the home of the father, where they were thriving, happy and well adjusted.

### **DISPOSITION AT TRIAL COURT**

The trial Court awarded custody of the three minor children to the mother after two days of trial to the Bench.

### **STATEMENT OF THE FACTS**

1. Petitioner and Respondent were married on January 7, 1989. Finding of Fact #3 at page 199 of the Record.
2. They have three children as follows: MACKENZIE LYNN DUNN (DOB: 1-25-91); MACKENZIE JAMES DUNN (DOB: 6-28-94) and KIEFFER CHARLES DUNN, (DOB: 6-

12-96). Finding of Fact #5 at page 199 of the Record. 3. The parties separated in May of 1998 after a serious clash. Finding of Fact #26, at page 202 of the Record.

4. Valerie Dunn took the minor children to California during the summer of 1998. Finding of Fact #26, at page 202 of the Record.

5. The children were then returned to Utah in July, 1998. Finding of Fact #28, at page 202 of the Record.

6. On July 29, 1998, the Lower Court issued a Temporary Restraining Order, preventing the Respondent from removing the minor children, until the matter could be heard by the Domestic Relations Commission on August 5, 1998, so a week or so later. Note Record at page 011.

7. At the hearing, both parties were represented by Counsel and entered into a stipulation calling for the Petitioner and Respondent to have both joint legal and joint physical custody of the three minor children. Note record at 049.

8. Valerie Dunn chose to leave Utah and pursue her career in the Sacramento, California area where she resided until trial some seventeen months later. Note page 8 of the transcript.

9. Mackenzie Lynn Dunn has a serious learning disability and one which has been the subject of a very special educational plan at her Elementary School in Utah. It is known as an IEP for Individualized Education Plan. Note the transcript at page 176.

10. Mackenzie Lynn Dunn was having severe problems in the core subjects of spelling, language and reading and also math. Transcript at page 225 and 237.

11. A child custody evaluation was performed by Dr. Craig Swaner, who prepared a Psychological Report for the Court. Note Addendum Exhibit 1.

12. Dr. Swaner concluded that Cory Dunn was the Primary Care Giver. Page 9 of

granting of custody to the Respondent/Appellee.

13. Dr. Swaner not only recommended that Cory Dunn be granted custody of the minor children, but that it would be detrimental for the children to be removed from their settings in Utah where they were happy and well adjusted. Page 12 of the Psychological Report attached in Addendum as Exhibit 1.

14. Dr. Swaner went so far as to say that it would be detrimental for Shea to leave her academic program for any significant period of time and therefore he suggested specific limited visitation in Valerie Dunn. Page 13, Psychological Report attached in Addendum as Exhibit 1.

15. Because the Court had decided not to consider the events and the actions and conduct of the parties between the time of the Restraining Order and the time of Trial. Note Finding of Fact #32 at page 203 of the Record.

16. The Lower Court totally ignored the Child Custody Evaluation not only its conclusions but also the underlying data and analysis. Note Finding of Fact #22, at page 201 of the Record.

17. The Lower Court awarded the sole, permanent care, custody and control of the parties three (3) minor children to their mother and they were dislocated in California by the time that the final Decree of Divorce was signed. Note Finding of Fact #46, at page 207 of the Record.

18. The undisputed evidence at trial showed that Shea Dunn actually improved academically and gained lost ground while Valerie Dunn was not involved in her schooling. Note Exhibits 3 and 4 in Addendum showing test results indicating the before and after. Also note page 77 through 83 of the transcript.

19. The Court assumed that the children would be relocated to a home outside of the

school boundaries because there had been a Notice of Default filed against the family home in Roy, (Note Finding of Fact #34) however, the same was cured as noted in the Record at page 56.

20. While working in Utah at Smiths before she left, Valerie did wonderfully well and got promotions, etc., however, when she moved to California after stipulating that the children would remain here, she got a job making only \$11.05 per hour. Note Transcript at page 11 and 435.

21. The Lower Court concluded that since Cory Dun had sought out special help in styling Shea's hair after Valerie left to permanently reside in California, this was dispositive of who had been the primary care giver before the parties separated in May of 1998. Note Finding of Fact #33.

22. The Court concluded in Finding of Fact #40, that each party hereto had extended family in their respective states, however, Valerie testified that there were no family members on her side that were the age of the children, except a child that might come into the family based upon a potential marriage involving Valerie's brother. Note transcript at page 14.

23. At trial Valerie Dunn testified that she had spent as much as \$6,000.00 to visit the children while she was living in California, during the seventeen month period, however, on page 438 and following of the transcript she testified she never at any time during the said seventeen months ever once stopped into the schools to speak with anyone about her special needs child and her well being.

24. In Finding of Fact No. 37, the Lower Court found that the telephone at the residence of the Petitioner had been disconnected because Cory could not pay the bill during the subject seventeen month period of time, however, it was undisputed that Valerie Dunn provided the children with a phone card so that she could be benefited by being called by the children, yet did

not pay a time towards paying on the general phone service for the benefit of the children.

### **SUMMARY OF THE ARGUMENT**

In this case, a child psychologist was assigned to do a psychological examination of all parties and then make a recommendation to the court.

The Psychologist came back with a report that stated that not only should the Father be awarded custody, but that it would be detrimental to the well being of the child to remove the child from her established school program.

The Lower Court, with no explanation, completely ignored the said report and removed the children from their Father's home where the Court found that they were thriving, happy and well adjusted.

The Lower Court completely ignored the seventeen months immediately preceding the trial for no apparent reason. In these seventeen months and before the Father was the Primary Care Giver of the minor children.

Appellant submits that the Trial Court erred when it overlooked the seventeen months preceding trial.

The great majority of witnesses submitted their testimony by way of Affidavit and the report was also done in writing, so there is no basis at least as to this evidence to defer to the Lower Court, as the Trial Court had no greater ability to assess credibility than will the Appellate Court.

### **ARGUMENT ONE**

#### **THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY**

#### **WHEN IT COMPLETELY OVERLOOKED THE CHILD**

#### **CUSTODY EVALUTAION**

On or about August 5, 1998, the parties with the assistance of Counsel agreed in open court for the appointment of a Child Custody Evaluator.

The Temporary Order, at page 50 of the Record states:

“8. A child custody evaluation shall be completed by Craig Swaner, and each party shall pay one half of the costs for the same.”

At page 41 and following of the Transcript Cory Dunn explained how the Evaluator was selected in this matter:

Q. (BY MR. WALSH) And in – pursuant to that hearing, Dr Craig Swaner was selected as an evaluator; is that correct?

A. Yes, that is correct.

Q. Can you tell me who came up with the name of Swaner?

A. John Caine, Valerie’s attorney, and herself, I would assume.

Q. So, was it something that I picked and asked them to—

A. Oh, no. Not at all.

Q. Okay. And did you then acquiesce in having Dr. Craig Swaner do the evaluation.

A. We did.

Dr. Craig Swaner’s Child Custody Evaluation is found at page 258 of the Record. A true and correct copy of the same is attached as Exhibit 1, in the Addendum.

It should be noted that this evaluation was not done by some generic child custody evaluator. It was done by Dr. Craig Swaner, who performed a series of tests and applied other objective criteria, as noted on the first page of the evaluation:

“Both Mr. and Mrs. Dunn were provided MMPI’s, Sentence Completion Tests, Beck Inventories, Automatic Thoughts Questionnaires, Mental Status Exams, Child Custody Survey Evaluation and Clinical Interviews.”

On the second page of the Evaluation, Dr. Swaner described the methods he used to



determine Shea's problems:

"In addition, the examiner had the opportunity to individually evaluating the older child Shea, Shea was provided measures of intellectual ability, academic performance as well as emotional measures including Kinetic House Tree Family Drawing and Figure Drawing.

Also, on page 2 of the Record is the following:

"The examiner also had the opportunity to observe the children in the company of the natural mother, Valerie Dunn, however, for a limited amount of time."

Dr. Swaner on page 3 made the following observations:

"For the most part this is a tale of 2 individuals with 2 separate agendas. It is apparent to the examiner that Valerie Dunn is quite career driven and places career somewhat above family related activities. While in contrast Mr. Dunn has changed vocational activities in order to make himself more available for family interaction."

...

"Mr. Dunn seemed to be more actively involved with the children on a day to day basis. While Valerie was significantly involved with the children and the family activities on a more important day basis. Valerie apparently puts a great deal of effort into holidays, birthdays, vacations and other special days while still attempting to maintain her vocational statue."

"Mr. Dunn on the other hand has apparently taken over more of the day to day operations of the family. He has found employed (sic) in the area that provided a more flexible work schedule and hence greater availability to the children."

On page 7 of the Evaluation, under the heading,

"4. General interest in continuing previously determined custody arrangements where the child is happy and well adjusted."

"Throughout the course of this evaluation, it was obvious to the examiner that both Valerie and Cory Dunn are interested in providing for the needs of the 3 minor children. The children certainly appear to be happy and well adjusted with their residential situation in Roy, Utah. This residential placement is maintained by Cory Dunn."

"There are some allegations that the children are less happy and less well adjusted within the residential situation provided by Valerie Dunn in Southern California. However, it is the examiner's opinion that the children are happy and well adjusted within the physical presence of their mother, Valerie Dunn."

"A move to California would be viewed by this examiner as being somewhat disruptive

to the children as that means a significant change in residence, significant adjustment with support system providers, significant adjustment particularly with regards to Shea with academics. There would also be a significant adjustment with regards to peer relationships.”

“Shea would have significant difficulty with regards to a change in academic placement. Shea’s is a special needs child with regards to learning disabilities and limited cognitive ability. She is currently programmed in a special education program at her local elementary school. She has been evaluated on numerous occasions for appropriate placement. She has apparently adjusted to her current situation and is a child that needs significant structure and organization.”

“It is the examiner’s opinion that it would be detrimental for Shea to change schools at this time as she does have a significant program in place. Therefore, it is the examiner’s opinion that a change to a California residence would be particularly dysfunctional for Shea and somewhat detrimental to the younger siblings as life as they know it has been spent in their current residence.”

“Again, it is apparent to the examiner that the 3 minor children are generally happy and well adjusted.”

On page 9 and 10 of the evaluation performed by Dr. Craig Swaner he opined that the parties had actually switched roles as he perceived Cory as the day to day primary care giver and Valerie as the bread winner:

“During the course of this evaluation, it was obvious to the examiner that both Mr. and Mrs. Dunn have maintained a significant and sincere desire to provide for the primary custodianship of the children. However, it is also apparent to the examiner that both parent figures have different perspective with regards to parenting and custodial role.”

“It is apparent to the examiner that Mr. Dun has been actively involved in the day to day activities of the children, he appears to have been the most involved from the perspective of being a primary day to day caretaker.”

“Affidavits provided by neighbors, day care centers and relatives are congruent with the perception as well as the report of Valerie and Cory Dunn. Valerie has perceived herself to be substantially in the children’s lives and in the examiner’s opinion she has been significantly involved however from a different perspective.”

“To some extent stereotyped roles have been somewhat reversed in this particular family relationship to a significant degree over the past few years. It appears to the examiner that Mr. Dunn has been more closely associated to the maternal role, while Mrs. Dunn has been most closely associated to the paternal role.”

“Therefore the discrepancy in the parent’s behavior has been reversed. From that point of view it is the examiner’s opinion that Mr. Cory Dunn has functioned more closely to the primary care provider when compared to his wife, Valerie.”

I don’t believe that there is a significant discrepancy between the individuals desire for custody, but there is a discrepancy in their perceived roles.

On page 10 of the subject evaluation, Dr. Swaner concluded that Cory would do better for the children when considering ones ability to provide personal rather than surrogate care, as Cory had arranged his employment so that he could be there for the children.(Compare page 3 with page 10).

Finally on pages 12 through 14, Dr. Craig Swaner made the following “Conclusions”:

“On the basis of this evaluation conducted with Cory Dunn, Valerie Dunn and their 3 minor children, Shea, Mackenzie and Kieffer, it is the examiner’s opinion that both natural parents are capable of meeting the needs and responsibilities associated with primary custodianship.

At the time of this evaluation, Cory and Valerie Dunn have joint legal custody of the children. The examiner believes that there is no particular need at this time to adjust joint legal custody issues. The most significant aspect of this evaluation is to determine appropriate physical custody of the aforementioned minor children.

Based on this evaluation, it is apparent to this examiner that the 3 minor children would be best served remaining in the primary residence of their natural father, Cory Dunn.

With the children remaining in their current physical placement they will be subject to less adjustment difficulties. It is obvious to the examiner that the children are adjusted and happy within their current residence. A significant change in residence particularly that to a different state would be in the examiner’s opinion significantly detrimental at this point in time.

The change in residence would be most significantly felt by the oldest child, Shea, due to her academic programming, her social relationships and her overall perception of stability.

There were no significant indications in the examiner’s opinion to separate the children as it was found by the examiner to be beneficial for the children to remain as a group for the purpose of providing one another social support and stability.

In addition the children have apparently indicated to their current counselor, Sharon St. John that they were unhappy within the residence in California. The examiner could find

no significant purpose at the time of this evaluation for the children to relocate to an out of state residence.

In addition, it is the examiner's opinion that Cory Dunn has essentially functioned as the primary care taker for the children's day to day needs over the course of the last few years.

Valerie has fled to California to seek significant social emotional support from her family and although that is seen by the examiner to be beneficial for Valerie, I do not see that being significantly beneficial for the children.

To uproot the children from a domain that they find secure, safe and stable would be a disadvantage to the children, in the examiner's opinion.

Throughout the course of this evaluation, it is the examiner's opinion that both Cory and Valerie Dunn are capable of meeting the needs of the children on an individual basis. Neither Mr. or Mrs. Dunn appear to be a significant threat in the examiner's opinion to the children's well being. Both natural parents have exhibited significant stability and responsibility in all of the major life domains.

There were no concerns in the examiner's opinion with regards to bonding between the parties and the 3 minor children. The children appear to feel safe within the immediate relationship with their parents. At no time did the children indicate to the examiner that they were concerned with their safety or security in the presence of Mr. and Mrs. Dunn.

With regards to interaction, it is imperative in the examiner's opinion that both Cory and Valerie actively participate with their children on a regular basis. Unfortunately, the situation is somewhat confounded by the fact that Mrs. Dunn resides in California and Mr. Dunn resides in Utah.

Given the fact that Shea is currently involved with a significantly structured and programmed setting, it would be inappropriate for her to leave her academic pursuits on a regular basis for any extended period of time and hence visitation should be provided to Mrs. Dunn for an extended period during the summer months and also an extended period during the Christmas Holidays."

The Lower Court completely ignored the evaluation that it had ordered.

In Finding of Fact #22, the Lower Court at page 201 of the Record states as follows:

"22. The parties' children Shea, Mackenzie and Kieffer are well adjusted. Although Shea is somewhat learning challenged, she has progressed well in school. Both parties agree that the intellectual and learning capabilities of Shea described by Dr. Swaner in his November 3, 1998 Child Custody Evaluation Report do not describe the child the parties know."

It is fair to say that an Evaluation is nothing more than a recommendation to the Court and the ultimate decision is to be made by the Judge, however, when there is an underlying basis for the conclusion coupled with the heightened qualifications of the Evaluator, the recommendation becomes more like a Dr. Prescription, rather than a social workers recommendation.

In any event there is no explanation why the Lower Court did not consider the underlying facts and observations of the evaluator.

Counsel for the Appellant respectfully submits that it clearly was error for the Lower Court to award Custody of the minor children to their mother when there are critical needs for the oldest child and where all three children are happy and well-adjusted in Utah.

The Lower Court is required to consider the provisions of §30-3-10 of the Utah Code Annotated as amended in 1998, which provides:

(1) If a husband and wife having minor children are separated or their marriage is declared void or dissolved the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties.

Counsel for the Appellant submits that there is no basis whatsoever for the Lower Court to totally ignore the doctor's Psychological Report, and particularly the health issues raised in the same, particularly as the same applied to Shea's mental and emotional health.

Counsel for the Appellant submits that the same forms sufficient basis, all by itself, for the Court to reverse and remand with instructions to grant the permanent care, custody and control of the parties three minor children to the Petitioner, Cory Dunn.

## **ARGUMENT TWO**

### **THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY WHEN IT COMPLETELY IGNORED THE ACTIONS OF THE PARTIES FOR A FULL SEVENTEEN MONTH PERIOD PRIOR TO TRIAL.**

In this action, the Lower Court completely ignored the parties conduct for a full seventeen months prior to the trial in this matter.

The Lower Court really gave no explanation for the same.

On page 203 of the Record, the Lower Court discusses the fact that it will not consider the last seventeen months for trial in determining Custody:

In FINDING OF FACT, No. 32 is the following:

“32. The circumstances of this divorce action present added scrutiny because of the temporary child custody order that was in place from August 5, 1998 until this case was tried during the first week of December 1999. It is clearly not appropriate to the children or the parties for the court to determine child custody based only on the period of time during which the temporary custody order was in place. Had Mrs. Dunn opted to file for divorce requesting temporary custody of the children and of the home, clearly she would have been granted the same and the court would be evaluating the case entirely differently. She could have also filed the action in California after establishing residency, presumably similar to the three month residency requirement for Utah. She chose not to do so. However, the court will not hold the available but unacted upon courses of action to her disadvantage.”

This notion of not evaluating the parties conduct for a full seventeen months before trial has its origins in the closing argument of Counsel for Mrs. Dunn, found at pages 464 and 465 of the Transcript:

“(By Mr. Patterson) But yet, you know this hindsight would say, and I – and to return to August the 5<sup>th</sup>, 1998, is obviously a threshold point in this case. It was a very big, influential point because it created interest and it created – it created actions and it created opportunities that before had not existed. Now, the system allowed, at least in the first instance was the TRO. And I know, Judge, I think you issued it. One professional to another I wish you hadn’t . . . “

That Appellant has real serious problems with the analysis of the Lower Court.

It appears that the Lower Court took the position that I am not going to focus on what is the best interests of the children, rather I am going to completely overlook the last seventeen months, as I had a part in the granting of the Temporary Order giving temporary custody of the minor children to Mr. Dunn.

In fact the Court expressly states that had Mrs. Dunn sought certain relief or had taken certain actions the facts would be different.

Appellant submits that this is exactly the point.

Valerie Dunn removed herself from the State of Utah and essentially did nothing for seventeen months, as noted in argument two.

If one parent or the other ignores the children, why should the Lower Court take the view, “Well had she not ignored the children things would be a lot different now.”

Whether the Temporary Restraining Order granted temporary custody to the Father or the Mother is of course interesting, but it is what they do from there that is absolutely relevant to the ultimate determination of custody.

The problem with the underlying premise of the Court’s analysis is that the Court did not come up with the idea that Mr. Dunn would have the children for seventeen months prior to trial.

What actually happened is that Valerie Dunn agreed to the same.

In fact, she agreed to the same in open Court, with the assistance of Counsel.

On page 49 of the Record is the Temporary Order, which states in part:

“The above entitled matter came on regularly for hearing on Wednesday, August 5, 1998, at the hour of 11:30 A.M., before the Honorable David W. Garner, Domestic Relations Commissioner, with the Plaintiff Cory Dunn appearing and represented by John Walsh, Attorney at Law, and the Defendant Valerie Dunn appearing, and represented by John Caine, Attorney at Law, and the Court after hearing the stipulation being read into the record, and finding the same to be fair and appropriate, approved the same and based thereon, for good cause appearing, it is hereby

ORDERED, that on a temporary basis:

1. The parties are hereby awarded joint legal and physical custody of the parties three (3) minor children.
2. The Defendant, Valerie Dunn shall have visitation with the minor children from the date of the hearing until at least the day before school begins in Utah, for Shea Lynn Dunn, which begins August 26, 1998.
3. Plaintiff Cory Dunn shall have the children from the time of at least one day before school begins, until such time as the child custody evaluation is completed, as described below.

Approved both as to  
form and substance:

/s/ JOHN CAINE.  
JOHN CAINE  
ATTORNEY FOR THE DEFENDANT”

Bottom line, Valerie Dunn, in open Court, with the assistance of Counsel stipulates and agrees that the children shall remain with Cory Dunn in Utah, until the evaluation is completed.

She chooses to do this of her own free will and with the assistance and direction of Counsel.

She then chooses to go to California with the children staying here. The Lower Court, for no apparent reason finds this all irrelevant.

The Lower Court treated the matter as though some Ex Parte order was entered, granting to Mr. Dunn the temporary custody of the children for some seventeen (17) months.

What actually happened is that the Lower Court granted a Temporary Restraining Order on July 29<sup>th</sup>, 1998 and the matter was then heard by the Commissioner less than one week later on August 5, 1998.

All that Judge Baldwin did was prevent the children from being removed from Utah until the hearing could be had before the Honorable Daniel W. Garner.



Valerie Dunn was personally present at the hearing before Commissioner Garner and she in open Court and with the assistance of Counsel stipulated and agreed on the record to leave the children here in Utah. She in turn goes on to California to pursue her career.

By virtue of the foregoing, why should the Lower Court take the view that it will totally omit any evidence of the care of the children and the actions of the parties for a full seventeen months prior to trial?

The Lower Court did not grant any Ex Parte order granting custody of the minor children to the Father for seventeen months, and so there is no basis for the Lower Court to somehow conclude that since the Court created this seventeen month block where the Children are with their Father, the Court will overlook any evidence during that same time period.

Counsel for the Respondent at this stage of the proceedings is a most competent counsel.

He is very astute and he carefully considered the desires of his client and her desire to leave Utah and pursue her career in California.

Counsel after agreeing to the terms in open Court, approved the same in writing “both as to form and substance.”

Appellant submits that the evidence presented to the Lower Court during this seventeen month period is most critical for the Court to consider in determining where the children should be placed and whether they should be disrupted and moved to California.

As noted on pages 20-26 of this brief, Shea Dunn was having very serious problems academically.

The doctor that evaluated the matter and submitted his written report stated that it would be harmful to remove the children from Utah.

Yet the Lower Court openly states that it will not even consider the same, as the Lower

Court was somehow responsible for the choices that Mrs. Dunn made in placing the children in Utah while she pursued her career in California.

Counsel respectfully submits that it is at least unfair and unjust to decide matters of this importance on anything other than the choices that the parties make, particularly those made in open court, with a full and complete understanding of the facts and the law all with the advice of very fine counsel.

As a result of this determination made by the Lower Court to completely overlook the time when the mother chose to place the children in Utah while she is pursuing her career in California, there was no consideration of the following evidence.

At page 89 of the transcript Cory Dunn testified:

Q. (BY MR. WALSH) I asked her today about things regarding the children, and she said what she said. And I'm not going to comment on that, other than to say does she ever ask you for information regarding the children and you withhold it from her?

A. No.

Q. Does she ever ask how they're doing in school?

A. She never asks how they're doing in school.

Q. She ever ask how they're doing as far as any kind of developments concerned?

A. No.

Q. Doesn't even ask?

A. Doesn't even ask.

At trial, Valeria called Jeanine Hansen to testify in her behalf, beginning at page 221 of the transcript.

Ms Hansen testified that she had been teaching at the Valley View Elementary for five years. (Transcript at 222). That she was currently teaching Shea spelling, language and reading

for five days a week. (Transcript at 225)

On Cross Examination by Mr. Walsh, beginning at page 233 is the following:

Q. Every day. You've had parent/teacher conferences there at the school.

A. Yes.

Q. And can you tell me which parent or if both parents have attended those parent/teacher conferences.

A. Mr. Dunn does.

Q. Have you had any contact at all with Mrs. Dunn?

A. No.

Q. Not a telephone call?

A. No.

Q. Not a letter.

A. No.

Q. Not a note from the principal saying please call the mom and –

A. No.

Q. Nothing.

A. No.

Valerie Dunn called another witness Janet Afton Meyer to testify in her behalf as found on page 235 and following of the Transcript.

During questioning by Mr. Patterson, Janet Afton Meyer testified that she was a special education teacher for seventeen years. (Transcript at 236) That she teaches math to Shea and how Shea is in her lowest group. (Transcript at 237)

On cross examination by Mr. Walsh, at page 243 is the following:

Q. And in reference to that, can you tell me who's been involved, which parent or both

parents have been involved in that IEP program from your perspective?

A. I met with Cory.

Q. Okay. Have you ever met with Valerie?

A. No, I haven't.

Q. Have you ever had any communication at all from Valerie?

A. No.

Q. No phone call?

A. No.

Q. No letter?

A. No.

Then again on page 246, Valerie's witness Janet Afton Meyer, stated on Cross

Examination by Mr. Walsh as follows:

Q. When we talked a moment ago about input from Shea's mother, and you gave us your answer, were you thinking it was just calendar year starting in, say August, until present when you answered the question of the involvement from mom? Or were you thinking from the time that you began in the fall of 1998?

A. Probably from the fall of 1998.

Q. So, when you made comment that there was no contact, no letter, no communication, no nothing, you're commenting for the last 16 or 17 months or thereabouts?

A. Yes.

On page 250 of the Transcript, Cory Dunn testified on direct examination by Mr. Walsh as follows:

Q. There was a discussion with Maureen Newton regarding Valerie coming to other IEP meetings, and she was commenting well, I didn't attend them all so I can't tell you if Valerie attended those meetings with teachers or therapists or whatever. Can you tell the Court if Valerie ever attended any of those meetings?

A. At the IEP – no. She didn't.

Q. She attended the first.

A. The first, right.

Q. And beyond that, how many meetings did she attend as far as IEP meetings were concerned.?

A. None.

Q. The first meeting was in the fall of 1990?

A. 1997.

Q. 1997. And hence we have the testing done in 1997 and again in 1998; is that correct?

A. Yes, sir.

Counsel for the Appellant respectfully submits that not only did the Lower Court completely overlook the evidence regarding the respective parents involvement with the children during the seventeen or so months before trial, as it affected their schooling, the Court overlooked the involvement of the parents at other settings than merely at school, as noted on pages 286 and 287, where Ron Conrad testified.

He explained that he was the Home Teacher of the Dunn's, and had an interest to look in on them on a regular basis for at least some of the seventeen months.

He testified as to the father's relationship with all his children in the areas of their lives other than school.

He testified that Cory was an exceptional parent and gave examples and specifics.

Yet there is not a shred of evidence from this witness as to anything that Valerie was doing for the children in any areas of their lives.

Not only did Valerie's witnesses, Jeanine Hansen (Shea's spelling, language and reading teacher) and Janet Afton Meyer (Shea's math teacher) testify that Valerie did not make a single

effort to call or write or in any way get involved in Shea's needs, so did Valerie herself, beginning at page 439 of the transcript:

Q. (BY MR. WALSH) You heard the math teacher testify yesterday, didn't you?

A. Uh-huh (affirmative)

Q. And the math teacher said you didn't call her even one time, is that true?

A. That's true. Yes.

Q. And Shea's been diagnosed to having problems with math, and that's why she's in special ed math right now, isn't that true, also.

A. She's not in special ed class. She's one step above the special ed class.

Q. In math.

A. As I understand it.

Q. In math.

A. In math.

Q. She's in an IEP program, especially designed for her for math.

A. No.

Q. Yes?

A. I never made a phone call to the math teacher, to answer your question.

Q. And she said that was the case for two years, is that true?

A. Yes.

Q. And that's because you're too far away, huh?

A. I guess that's one way you can look at it.

Valerie went on to testify beginning on page 440 of the Transcript that she had made no contact with the Counselors at Shea's school and no effort to talk to the therapist at Shea's

school.

Counsel submits that the Lower Court completely overlooked this critical evidence regarding a most critical aspect of this child's life.

As noted by the teachers, these are fundamental subjects and if one can not develop appropriate skills in these critical areas the child is affected for a lifetime. (Note transcript at page 180 and 181)

Counsel submits that it was error for the Lower Court to completely overlook the actions of the parties for a full seventeen months prior to trial, as the mother said it best when she said, "She was too far away."

She was in her own world, pursuing her career and both literally and figuratively was too far away from her children.

Here Valerie Dunn chose to absent herself from the State of Utah. Valerie Dunn chose to absent herself from the lives of her children.

These were choices that she made not decisions of Judge Baldwin.

There can be no basis to overlook this evidence and there surely is no basis to overlook this evidence because the Court was somehow involved in the granting of a Temporary Restraining Order.

That lasted for a mere week, Valerie's actions and Valerie's choices spanned seventeen months.

It can not be overstated that Valerie was in a joint legal and joint physical custody arrangement during all of this time frame, so one can not say that she was prevented in any way from being fully and completely involved in the lives of her children, in every aspect of the same.

As a matter of law the Lower Court should not be concerned about how the present custodial arrangement came about, the Lower Court, should be putting on blinders and focusing solely on what is in the best interest of the children. Elmer vs. Elmer, 107 Utah Adv. Rep 37 (Ut. 1989). Also note Paryzek vs. Paryzek, 776 P.2d 78 (Utah App. 1989), holding that it was error for the Lower Court to ignore the child custody arrangement during the period immediately before trial on a permanent custody award.

By virtue of the foregoing, Appellant respectfully submits that the Lower Court be reversed and the matter remanded to the District Court with instructions to award custody of the minor children to Cory Dunn.

### **ARGUMENT THREE**

#### **THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY WHEN IT CONCLUDED THAT THE PARTIES' CHILD SHEA'S CONDITION WAS NOT SEVERE**

Appellant submits that the Lower Court inappropriately discounted the severity of Shea Dunn's learning disability.

Dr. Craig Swaner stated in the child custody evaluation at page 2 what process he underwent to determine the severity of the problems with Shea academically: (A true and correct copy of the same is part of the Addendum as Exhibit 1)

In addition, the examiner had the opportunity of individually evaluating the older child Shea, Shea was provided measures of intellectual ability, academic performance as well as emotional measures including Kinetic House Tree Family Drawing and Picture Drawing.

At page 7 of the Evaluation, Dr. Swaner made the following observation:

A move to California would be viewed by this examiner as being somewhat disruptive to



the children as that means significant change in residence, significant adjustment with support system providers, significant adjustment particularly with regards to Shea with academics. There would be a significant adjustment with regards to peer relationships.

Shea would have significant difficulty with regards to a change in academic placement. Shea is a special needs child with regards to learning disabilities and limited cognitive ability. She is currently programmed in a special education training program at her local elementary school. She has been evaluated on numerous occasions for appropriate placement. She has apparently adjusted to her current situation and is a child that needs significant structure and organization.

C. Therefore, it is the examiner's opinion that a change to a California residence would be particularly dysfunctional for Shea and somewhat detrimental to the younger siblings as life as they know it has been spent in their current residence.

Lastly, Dr. Craig Swaner made the following conclusions as they apply to Shea and her learning disabilities, on page 12 and 13 of his report:

With the children remaining in their current physical placement they will be subject to less adjustment difficulties. It is obvious to the examiner that the children are adjusted and happy within their current residence. A significant change in residence particularly that to a different state would be in the examiner's opinion significantly detrimental at this point in time."

The change in residence would be most significantly felt by the oldest child, Shea, due to her academic programming, her social relationships and her overall perception of stability."

Dr. Swaner was not the only one that found Shea to have severe learning disabilities.

Cory Dunn testified at page 77, that they had tested Shea when she was 7 and her maturity was that of a four year old.

Cory Dunn, on page 217 of the Transcript, testifies about his first meeting with Dr.

Swaner and described it as follows:

"Well, what I know is when I sat down in my interview with Dr. Swaner and his characterization of Shea was – was a – a little girl who was beautiful and wonderful but that had an IQ just above 70. And he said I hate to be the one to break this to you, he says, but did you know what that means? And I said no, not exactly. And he says that means, to me, from what I've seen in my career, that means that the child is a little bit above - - one step above mental retardation, is the way he put it to me."

The professionals at Shea's school each testified of the severity of Shea's learning disability and the programs that they were implementing for her specifically. Note for example Maureen Newton, Shea's principal, who had been in charge of Shea's program for three years, testified of the special programs on page 176. Also note Jeanine Hansen, who teaches Shea spelling, language and reading five days a week, who testified of She's special programs at page 226 and following. Also note Janet Afton Meyer, who teaches Shea math, who testified on page 237, that Shea was in the lowest group.

On page 437, Valerie Dunn testified that when Shea was in kindergarten Mrs. Kinnistron and Mrs. Newton each suggested that Shea be held back. She also testified on the same page that beginning in the first grade it was suggested that Shea be put in special education.

Counsel for the Appellant respectfully submits that the Lower Court clearly discounted the severity of Shea's learning disabilities, when it pulled Shea from her "Individualized Education Plan" at Valley View Elementary and from her Scottish Rights program which was designed to help her with her learning disability, and removed Shea to California.

In Finding of Fact #22, at page 201 of the Record, the Lower Court specifically discounts the severity of Shea's learning disability:

"22. The parties' children, Shea, Mackenzie and Kieffer are well adjusted. Although Shea is somewhat learning challenged, she has progressed well in school. Both parties agree that the intellectual and learning capabilities of Shea described by Dr. Swaner in his November 3, 1998 Child Custody Evaluation Report do not describe the child the parties know."

Appellant actually does not challenge this Finding of Fact, as it is true, but in a totally different sense than the Court implies. The Court implies that Shea will be just fine if we moved her to California, as she is much better than as described by Dr. Swaner.

The reason that this statement that the child is not the child described by Dr. Swaner, as

described by the parties is really two fold.

First, it is apparent in the evidence that Valerie has never been on top of Shea's problem.

Second, it is apparent in the evidence that Cory had worked so hard with Shea after Dr. Swaner did his testing, that Cory would have to agree that Shea had improved so much since the testing was done in the evaluation, that she was not the child at the time of trial that she was at the time of the testing.

Going back to the first point that Valerie has never been on top of Shea's problem, it is manifest on page 25 of the Transcript with Valerie on the stand:

Q. (BY MR. WALSH) Do you know what areas the school is focused on for Shea for the calendar year 1999?

A. Math and reading.

Q. And do you know what they're doing in that regard?

A. She's in a lower-level math class and reading class.

Q. And what I'm asking you, Valerie, is could you tell the Court what they're doing as far as her educational program is to address her special needs in 1999?

A. Yes. They have her in a lower-level, slower learning level class for that particular need – to meet that particular need.

Q. I see. And what I'm really asking you is can you tell me what the program has for Shea in that lower level. Can you tell the Court anything about that?

A. No, I cannot.

The reason that Valerie can say that she does not see the problems that Dr. Swaner sees, is because she has not been involved at all with the problem to start with.

Valerie Dunn has done essentially nothing when it comes to the learning disability of her daughter. She can not even describe what the school is doing for her child as noted above.

The obvious reason that Valerie Dunn can not describe anything about the schooling for

her special needs child is because she has done nothing to even learn about it.

As noted on page 29 of the Transcript, Valerie in the course of the year had called the principal Mrs. Newton one time, and when asked what Valerie was doing in reference to the children's education she stated as follows:

Q. (BY MR. WALSH) And have you done anything other than the single phone call you told us about?

A. Other than talking to the prin – Mrs. Newton?

Q. Yeah.

A. No.

Valerie Dunn admitted in open Court under oath that she had done nothing in reference to the education of her children for the year other than called the principal one time.

It would be easy for her to say that she does not see the learning disability that Dr. Swaner described, because she does not even see the problem.

Valerie Dunn has been pursuing her career in California and never contacted Shea's teacher, Jeanine Hansen, who teaches Shea spelling, language and reading five days a week, even one time in the entire year, as noted on page 233 of the Transcript.

Valerie Dunn has been pursuing her career in California and never contacted Shea's teacher, Janet Afton Meyer, who teaches Shea math, even one time in the entire year, as noted on page 243, of the Transcript.

Cory on the other hand, could not be more on top of the problem. Cory has seen the problem. Cory has seen the progress and hence would be able to see the difference between the testing done by Dr. Swaner and the child at the time of trial.

On page 80, Cory Dunn described Shea's changed condition with excitement:

Q. (BY MR. WALSH) Do you see in Shea any sense of satisfaction and accomplishment

in that regard?

A. Very much.

Q. Tell me about it quickly.

A. Well, she just - - she knows that her reading is improving because of the speech and language therapy that she's been receiving. And Shea's the type of girl, that when she's reading something, she won't, she doesn't stop and won't stop reading the same sentence until she fully understands what it's content is, which is a credit to her because she's a hard worker. So, what this does is gives her an opportunity to see the results of it, because now when she reads, she's actually reading with a lot of meaning.

Q. And does that affect her self-concept (inaudible)?

A. Oh, yeah. She was reading me a story this morning out of a book that the school gave her. Just for an example, with all the quotation marks and – and the things she's actually recognizing now when somebody's talking in a story. And she articulates that through her voice inflection (sic) and it's just wonderful to see.

Counsel for the Appellant submits that this is a black and white issue.

Valerie could not be less involved in Shea's problem and Cory could not be more involved.

Hence, the Finding of Fact that states that Shea is not the child with severe learning disabilities as described by Dr. Swaner is all true, as Valerie has not seen the disability in the first place and Cory on the other hand has worked with this little girl and she was a different girl at the time of trial than she was at the time of testing.

Counsel for the Appellant submits that there are several factors that the Lower Court must consider and the concern for the child's specific needs and which parent is addressing those needs is paramount. Note Hutchison vs. Hutchison, 649 P.2d 38, (Utah 1982).

Counsel for the Appellant respectfully submits that the Lower Court erred in not awarding Petitioner Custody when it concluded that the parties' child Shea's condition was not severe.

**ARGUMENT FOUR**  
**THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY**  
**WHEN IT REMOVED THE CHILDREN TO CALIFORNIA**

It is undisputed that the children, all three of them, were happy and well adjusted in Utah.

At page 201 of the record is Finding of Fact #22. The Court starts off with “#22. The parties’ children Shea, Mackenzie and Kieffer are well adjusted.”

Then again in Finding of Fact #23, at 201 in the Record is the following:

“Shea has progressed in school with the assistance of an academic program specifically worked out for within the Weber County School District elementary. She attended, with the help of her former principal, with her mother and father initially, and with her teachers.

In Finding of Fact #25, at page 202 of the Record, is the following:

#25. Shea does very well in her social activities and is a very happy and outgoing child. Mackinse is now in kindergarten and appears to be extremely bright. Mackenzie is doing well in school. Kieffer has yet to begin school.

Lastly in Finding of Fact #31, at page 203 of the Record the Court stated:

Each parent is a fit and proper person to be awarded custody of each of their three children. Each parent ha shown a loving and caring commitment for the children.”

Appellant submits that once the Court has found that each of the parents is a fit and proper person to be awarded custody, along with the fact that the children are well adjusted and happy and that the child Shea was succeeding in school with a specialized program to assist her special earning disabilities it was an abuse of discretion to remove the children from Utah.

This is particularly so, when the Court considers the “Psychological Report” submitted by Dr. Craig Swaner, as Dr. Swaner brings a unique battery of evidence before the Court.

Trials many times are a battlefield of “he said/she said.”

Hypothetically a situation where everyone in the one car testifies that the light was red

and everyone in the other car testifies that the light was green.

The trial judge then has to decide which way the evidence preponderates.

Dr. Craig Swaner is not just a wholly independent voice as one on the street corner telling the Court about the scene, he is a totally neutral, unbiased and unquestionable competent expert witness.

He was selected by stipulation and then Court Ordered to advise the Court on the facts of the matter. He was the Court's expert, not retained by either party.

In addition to all of the above, he is a health care professional, performing a Psychological Report, giving the court a diagnosis and then a prognosis on the children.

His diagnosis is found on page 3 of his "Psychological Report" which is attached hereto as Exhibit 1, in the Addendum:

"For the most part this is a tale of 2 individuals with 2 separate agendas. It is apparent to the examiner that Valerie Dunn is quite career driven and places career somewhat above family related activities. While in contrast Mr. Dunn has changed vocational activities in order to make himself more available for family interaction."

...

"Mr. Dunn seemed to be more actively involved with the children on a day to day basis. While Valerie was significantly involved with the children and the family activities on a more important day basis. Valerie apparently puts a great deal of effort into holidays, birthdays, vacations and other special days while still attempting to maintain her vocational statue.

"Mr. Dunn on the other hand has apparently taken over more of the day to day operations of the family. He has found employed (sic) in an area that provided a more flexible work schedule and hence greater availability to the children.

After Dr. Swaner made his diagnosis, as outlined above, he then proceeded to provide the Court with a prognosis, as found on page 7 of his "Psychological Report."

"A move to California would be viewed by this examiner as being somewhat disruptive to the children as that means a significant change in residence significant adjustment with regards to peer relationships."

“Shea would have significant difficulty with regards to a change in academic placement. Shea is a special needs child with regards to learning disabilities and limited cognitive ability. She is currently programmed in a special education training program at her local elementary school. She has been evaluated on numerous occasions for appropriate placement. She has apparently adjusted to her current situation and is a child that need significant structure and organization.”

“It is the examiner’s opinion that it would be detrimental for Shea to change school at this time as she does have a significant program in place. Therefore, it is the examiners opinion that a change to a California residence would be particularly dysfunctional for Shea and somewhat detrimental to the younger siblings as life as they know it has been spent in their current residence.”

“Again it is apparent to the examiner that the 3 minor children are generally happy and well adjusted.”

Following the diagnosis and prognosis as outlined above, Dr. Swaner then in a sense wrote a prescription for the mental health for the minor children, as found on page 12, under his title “Conclusions.”

“Based upon this evaluation, it is apparent to this examiner that the 3 minor children would be best served remaining in the primary residence of their natural father, Cory Dunn.

With the children remaining in their current physical placement they will be subject to less adjustment difficulties. It is obvious to the examiner that the children are adjusted and happy within their current residence. A significant change in residence particularly that to a different state would be in the examiner’s opinion significantly detrimental at this point in time.

Counsel for the Appellant submits that perhaps more significant to the Court than the prescription for the health of Shea and the other children, is the basis for that prescription.

On page 13 of the Psychological Report, Dr. Swaner explains to the Court the basis for the prescription:

“In addition it is the examiner’s opinion that Cory Dunn has essentially functioned as the primary care taker for the children’s day to day needs over the course of the last few years.”

“Valerie has fled to California to seek significant social emotional support from her



family and although that is seen by the examiner to be beneficial for Valerie, I do not see that being significantly beneficial for the children.”

Perhaps the full force and effect of this prescription can no be measured, until the Court carefully reviews the prescribed visitation for Valerie Dunn.

Dr. Swaner suggests that even a short period of time with Shea away from her highly specialized schooling would be detrimental, and therefore Valerie should have limited visitation, as noted at the bottom of page 13 and top of page 14 of the Psychological Report:

“Given the fact that Shea is currently involved in a significantly structured and programmed setting, it would be inappropriate for her to leave her academic pursuits on a regular basis for any extended period of time and hence visitation should be provided to Mrs. Dunn for an extended period during the summer months and also an extended period during the Christmas Holidays. Valerie should also have opportunities during the spring break period.”

By virtue of the foregoing Counsel for the Appellant submits that the Lower Court erred in not awarding Petitioner custody when it removed the children to California.

The evidence was undisputed. Dr. Swaner made his diagnosis that Cory Dunn was the Primary Care Giver. Dr. Swaner made his prognosis that it would be detrimental to the health of the children to move them to California.

Lastly Dr. Swaner gave the Court his “Prescription for the health of the minor children” which was leave them here in Utah where they are happy and well adjusted.

Counsel for the Appellant submits that this kind of a black and white issue. There is a million reasons for leaving a thriving child who is happy and well adjusted in Utah and a negative ten reasons for removing her to California. Note Hudema vs. Carpenter, 989 P.2d 949 (Utah App. 1999); Tucker vs. Tucker, 910 P.2d 102, (Utah, 1996), Hutchison vs. Hutchison, 649 P.2d 38, (Utah 1982); Deeben vs. Deeben, 106 Utah Adv. Rep. 55 (Utah App. 1989); Schindler vs. Schindler, 776 P.2d 84 (Utah App. 1989).

Counsel submits that the removal to California was particularly egregious because the Mother had little or no involvement with the children in Utah and the Father was the other extreme.

In the case of Elmer vs. Elmer, 107 Utah Adv. Rep 37 (Utah 1989) the Court stated:

What particular weight to be accorded those factors in a given case must depend on the duration of the initial custody agreement, the age of the child, the nature of the relationship that has developed between the child and the custodial and non-custodial parents, and how well the child is thriving physically, mentally and emotionally. A very short custody arrangement of a few months, even if nurturing to some extent, is not entitled to as much weight as a similar arrangement of substantial duration.

Here we have a special needs child that is thriving, happy and well adjusted. She is in a program that is specifically tailored to her individualized needs. Dad could not be more involved and Mom could not be less involved.

## **ARGUMENT FIVE**

### **THE LOWER COURT ERRED IN NOT AWARDING PETITIONER CUSTODY**

#### **WHEN IT FOUND THAT VALERIE DUNN HAD BEEN**

#### **THE PRIMARY CARE GIVER**

Counsel for the Appellant submits that the Lower Court found that the Mother, Valerie Dunn was the primary care giver of the minor children.

At page 204 of the Record, is Finding of Fact, #33 which states:

“33. In determining custody, it is important for the court to consider the best interests of the three children. During the course of the marriage and while the parties were together, Mrs. Dunn and not Mr. Dunn was the primary caretaker for the children. The children were very bonded to their mother, especially the youngest child Kieffer. It was Mrs. Dunn who performed the routine daily tasks with and for the children. Mr. Dunn certainly assisted and had substantial impact on providing and assisting with the children. A good example involved combing Shea’s hair. Mr. Dunn in his affidavit stated that he awakened the children each morning to bathe them, feed them, take them to school and so on. However, he testified that after receiving temporary custody of the children he went to great lengths to learn how to comb Shea’s hair and how well he has developed that skill. Prior to the entry of the August 1998 temporary custody order in this action,

Mrs. Dunn was providing most of the care giving.”

In the case of Peterson vs. Peterson, 818 P.2d 1035 (Utah App. 1991) the Court stated

We set aside findings of fact only when they are clearly erroneous. Utah R. Civ. P. 52(a); Davis vs. Davis, 749 P.2d 647, 648 (Utah, 1988); Ashton vs. Ashton, 733 P.2d 147, (Utah 1987). In making the determination we give “due regard” to the “opportunity of the trial court to judge the credibility of the witnesses.” Utah R. Civil Procedure 52(a). A finding is clearly erroneous when “although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.” State vs. Walker, p.2d 191, 193 (Utah, 1987).

The Appellant is required to marshal all of the evidence and then show the Appellate Court as to why that subject finding is clearly erroneous. Note Davis vs. Davis, 749, P.2d 647, (Utah, 1988) Hudema vs. Carpenter, 989 P.2d 491 (Utah App. 1999).

Counsel for the Appellant submits that the Lower Court made the determination that Valerie Dunn was the primary care giver, only after it had concluded that it would wholly disregard the evidence of what had happened from August 5, 1998 to the time of Trial. Note Finding of Fact #32 at page 203 of the Record.

Should this Court conclude that that was error then perhaps it would be without dispute that Cory Dunn was the primary care giver, particularly during the time of August 5, 1998 to and including the time of trial in December of 1999, some eighteen or so months immediately preceding the trial.

Furthermore as a side issue as this Court defers to the Lower Court on the issue of credibility, it should be noted that most of the witnesses who presented evidence to the Lower Court did so by Affidavit.

The parties stipulated to the admissibility of the Affidavits as well as the Psychological Report of Dr. Swaner, so it is noteworthy that the Lower Court had no greater opportunity to assess the credibility than this Court, as the evidence by most witnesses was submitted in written

form to the Lower Court.

In order for Counsel for the Appellant to meet his burden of marshalling the evidence, Counsel not only submits to this Court all of the evidence as found throughout the Transcript, but also includes herewith as Exhibit 2 in the Addendum, Valerie Dunn's own summary of her efforts as the Primary Care Giver as testified to on pages 419 and 420.

At page 47 of the Transcript Cory Dunn testified that Valerie helped decide the decorations that would be put in the room that was for Shea. Valerie helped plan the same and Cory and Shea decorated it accordingly after Valerie left to pursue her career in California.

Cory Dunn testified on page 100, that Valerie Dunn worked full time and beyond, except for a couple of months when Valerie was home attempting to run a day care.

On page 116 of the Transcript Cory Dunn testified that Valerie would purchase the groceries, and he would prepare the meals.

At page 178, Maureen Newton, Shea Dunn's principal for three years, testified that Cory and Valerie Dun both attended the first Individualized Education Plan meeting.

At page 178, Maureen Newton testified that Valerie Dunn had telephone the school one time regarding records on Shea.

At page 248, Cory Dunn testified that Valerie Dunn took the children to the baby sitter at times. Compare at page 251.

At page 252, Cory Dunn testified how Valerie made the holidays and birthdays special.

At page 301, Valerie's Mother, Karen Louise Parker testified that Valerie had a bigger role in giving the children directions.

At page 303 and following, Karen Louise Parker testified how Valerie got the kids ready for school, helped with homework, she took them to the doctor and did the shopping.

At page 304, Karen Louise Parker testified that Valerie set the plan for the family for the day and then she and Cory worked the plan together.

At page 330, Valerie testified that she wanted to stay home after the youngest child was born, but that she could not as the family could not afford it.

Valerie testified as follows: Page 348, Valerie paid the day care providers, Page 350, Valerie was the one to drop the children for day care; Page 354, Valerie was the one to retrieve the children from day care providers eight out of ten times; Page 355, Valerie was the one to take the children for well care checkups; Page 356, Valerie was the one that did the shopping; Page 360, Valerie got kids up and fed and helped with homework 99.9 per cent of the time; Page 361, Valerie got the boys ready and took them to baby sitter; Page 363, Valerie fixed dinner seventy per cent of the time; Page 363, Valerie bathe the kids and put them to bed; Page 364, Valerie got Shea on to bus and then took long baths with little boys and then fixed lunch and then naps for the little boys; Page 365, Valerie did laundry; Page 366, Valerie cleaned home; Page 365, Valerie took Shea to Kindergarten; Page 376, Valerie called school to get report cards, spoke to Mrs. Newton (note above); Page 378, Valerie only one that helped Shea with homework; and as noted above pages 419 and 420 are reproduced in the Addendum as Exhibit 2.

Notwithstanding all of the above, Counsel for the Appellant submits that it was still an abuse of discretion for the Court to find that Valerie Dunn was the primary care giver as outlined below.

**First, Karen Louise Parker's** testimony is at best marginal as she testified that the only basis she had for her testimony was that she had made four trips to Utah to see the subject family, and the most recent of them was some two and one-half years prior to trial. Note Transcript at page 307 and 308.

**Second, the physical evidence** betrays Valerie's testimony, as noted in Finding of Fact #17, which shows from the tax returns who was working and putting in extremely long hours and who was otherwise available to take care of the children:

"#17. Mrs. Dunn's Utah employment income with Smith's Food & Drug Stores was more stable than the income Mr. Dunn earned from his construction business activities. The parties' 1997 joint income tax return shows only income from Mrs. Dunn's employment. This 1997 income tax return was prepared by Mr. Dun's father."

**Third, the conduct of the parties** betrays Valerie's version of her career and her goals to move up the corporate ladder.

No one can dispute that Valerie chose to move to California and leave the children in Utah. She entered into a written stipulation after agreeing in open Court to leave the children in Utah, as she pursued her career in California.

**Fourth**, no one can dispute that Valerie wholly and completely abandoned the children's needs while in California. Cory Dunn testified on page 89 that she did not even ask him how they were doing.

**Fifth, Maureen Newton**, who had been heavily involved in Shea's academics for the years 1996, 1997 and 1998, all before the parties separated in May of 1998, described the actions of Valerie and Cory in reference to Shea. (Note page 191 and following of the Transcript).

Maureen Newton testified regarding the actions of the parties on page 194 of the Transcript:

Q. (BY MR. WALSH) Did you perceive either parent following through with the directions from the school and the educators?

A. Cory seemed to follow through with any of the directions or anything we asked him to do to help Shea.

Q. Did you ever observe Valerie follow through on anything?

A. No.

It can not be overstated that Maureen Newton has no motive in the matter.

Maureen Newton testified, beginning on page 173 of the transcript and following of the special problems that She was having in school.

Maureen Newton was the principal at the school where Shea was attending. (Page 173) She is a certified elementary teacher, a certified special education teacher, she has a masters degree in elementary education and on top of it all has another administrative degree. (page 173 of the Transcript.)

On page 174, Ms. Newton testified that she was the principal in Shea's school from the time that she was in kindergarten, first grade and second grade. In fact she was the principal for the school where Shea attended for all of the time she attended school at all up to the time that the parties separated.

On page 175, Ms. Newton testified that she and the teachers were particularly focused on Shea's very serious problems in language and reading.

On page 176 Ms. Newton testified about the IEP (Individualized Education Plan) that was created for Shea, which was described on page 182 as a very intense program.

On page 188, Ms. Newton testified about how their school had received national recognition for their program.

Then on page 183, Ms. Newton testified as follows:

Q. (BY MR. WALSH) Okay, when you tried to implement your program, would you – who was your contact parent?

A. Cory.

Q. And can you tell me his involvement in reference to this intensive program you've described.

A. Cory's involvement with Shea has been above and beyond what I've seen with any

parent. He – would ask what he could do at home and we'd give him suggestions. And those were always followed to the letter. And he'd come back and – okay, now this is what I've done. This is what happened. And then he'd want more information about what else he could do with Shea. And he continually was contacting either myself or the teachers about how he could enhance her education at home. And what I saw in the progress Shea made, he did follow through on all those things.

Q. I see. Did you perceive a change in Shea?

A. Yes. Her academic skills got much better, and she seemed more confident. I don't have any way of measuring that, but she did seem more confident than she had before.

Counsel submits that this is not just what was happening in the lives of the parties and especially the children while Valerie was in Sacramento pursuing her career, this was the case while Valerie was residing in Utah, pursuing her career, as noted on page 191 of the Transcript, with Maureen Newton testifying:

Q. (BY MR. WALSH) Do you – did you perceive whether or not the respective parents were on top of Shea's problem here?

A. I perceived that Cory Dunn was on top of it. I have had little or, like I said, contact with Valerie.

Q. And tell me why you say that Cory would be on top of the problem.

A. Primarily because of the contact I had with him or teachers had with him. He attended all parent/teacher conferences, and he was continually asking how – how he could help Shea.

Q. Now, you're – you're telling me you were the principal for Shea for three years.

A. Correct.

Q. And that would be what? '96, '97 and '98

A. Correct.

Q. Roughly. Is – is your testimony the same in references to all three years?

A. Yes.

Finally, on page 193 and 194 of the transcript, Ms. Newton testified as follows:



Q. (BY MR. WALSH) Okay. Did you observe what Cory did in reference to the teachers? and I mean in distinction from what he did as far as you were aware or you personally-

A. On occasion. On – not every contact did I – was I there when he was with the teachers. But on occasion I was with – the teacher at the time.

Q. Did you – can you tell the Court what your observation was then?

A. He seemed to work very well with the teachers. He asked questions. Continually brought - - he would bring materials in at times and say is this something that would be appropriate for Shea. and – and I just know that he seemed to – that he seemed to have real good report with the teachers.

Q. Did you observe any of the same as far as Valerie was concerned with the teachers.

A. The time that Valerie came to the initial IEP meeting, she seemed to work well in that meeting. After that, it seemed that I – that Cory was the only one that came to any of the conferences that I was aware of and when she was in the – if she were in the building, I was not aware of it.

Q. Did you perceive either parent following through with the directions from the school and the educators?

A. Cory seemed to follow through with any of the directions or anything we asked him to do to help Shea.

Q. Did you ever observe Valerie follow through on anything?

A. No.

**Sixth, Jeanine Hansen** was called to testified by Valerie Dunn, at page 222 of the Transcript. She taught Shea at Valley View Elementary, spelling, language and reading five days a week. Transcript at page 225. There are five groups of students ranked from top to bottom by virtue of their difficulties in school, and Shea ranks second from the bottom. Transcript at 226.

Valerie's witness, Jeanine Hansen, testified as follows at page 233:

Q. (BY MR. WALSH) And can you tell me which parent or if both parents have attended those parent/teacher conferences?

A. Mr. Dunn does.

Q. Have you had any contact at all with Mrs. Dunn?

A. No.

Q. Not a telephone call?

A. No.

Q. Not a letter?

A. No.

Q. Note a note from the principal saying please call mom and - -

A. No.

Q. Nothing?

A. No.

Here is another critical witness, called to testify by Valerie Dunn. This witness has no motive. She has no bias.

This witness would see the comings and goings of Shea Dunn day after day.

This witness would be the one to work with Shea with her struggles with critical core subjects like reading, language, etc., as noted above.

Valerie's witness here states that Valerie has nothing to do with Shea.

**Seventh, Janet Afton Meyer**, called to testify for Valerie at page 235 and following of the transcript.

She teaches another core subject for Shea, i.e.: Math and she testified that she teaches the lowest math group there at Valley View Elementary. Transcript at page 237.

Valerie's witness Janet Afton Meyer, testified as follows on page 243:

Q. (BY MR. WALSH) And in reference to that, can you tell me who's been involved, which parent or both parents have been involved in that IEP program from your

perspective?

A. I met with Cory.

Q. Okay. Have you ever met with Valerie?

A. No, I haven't.

Q. Have you ever had any communication at all from Valerie?

A. No.

Q. No phone call?

A. No.

Q. No letter?

A. No.

**Eighth, Debbie Jensen**, was the day care provider for many years for the Dunns. Valerie Dunn testified at trial that Debbie Jensen was their babysitter, “. . .the bulk of the time.”

Transcript at page 347.

The parties stipulated to the admissibility of various affidavits submitted to the Court and to Dr. Craig Swaner, and the same was considered by each. Note Transcript at page 401 and 402.

At page 036 of the Record is the Affidavit of Debbie Jensen, who testified as follows:

“I was the Child Care Provider for the Dunn’s children from 1992 through 1996. Cory was the parent to drop off the children and pick them up most of the time. He was always the parent to call me when one of the children were sick during the night (sic) saying he had been up all night with the sick child. Very often Cory would bring the children after having to bath them in the morning, which was quite a chore when there was three small children. Sometimes Cory would drop the children off in the morning and also pick them up in the evening and take them home to feed them dinner.

To me it seemed like Cory was the parent taking care of the children while Valerie worked at her career. Cory would adjust his schedule to work around Valerie’s. Valerie was always kind to me. She always paid me on time. I would try to be friend (sic) but she did not seem like she wanted or had time for a friendship . . . “

**Ninth, Liz Hall** was the babysitter for the Dunns. Valerie Dunn testified on page 348, that Liz Hall was the day care provider from “. . . February '97 through the end of April, '98.”

At page 041 of the Record, Liz Hall stated the following in her Affidavit:

“Cory was & has been the sole provider or responsible parent. Valerie worked swing - - so he was home with his children every night & weekends. Valerie would work weekends also by choice just so she wasn't there for her children like Corey (sic) was.”

**Tenth, Sandy Cruz** was a day care provider for the Dunns in 1998, before Valerie left for California. Valerie Dunn testified about her at page 348 of the Transcript.

Sandra J. Crews, testified regarding the Dunns in her Affidavit, at page 020 of the Record as follows:

“I have observed in the few months I have known the Dunns, Valerie and Cory that Cory had the responsibility of always taking care of the (sic) his three children and always was the one taking care of the children. Valerie had told me that she always is tired and she has been sleeping to much and that Cory had to take care of the children. She had told me that Cory was the one who cooked the dinners, watched the kids while she was sleeping. She always seemed that she was acing out some depression. Always fidgety, sleeping, loosing track of time, I have nothing against either party, but I have observed that Cory is a very well caring father towards his children and is very responsible.”

**Eleventh, Deborah Coffin**, Shea's First Grade Teacher stated at page 009 of the Record:

“July 27, 1998, To whom it may concern,

Mr. Cory Dunn and I have known each other for the past year working to create an educational program for his daughter Shea. I have found Mr. Dunn to be a caring parent and very concerned about Shea's Learning Disability. Shea needs a specialized program to help her gain as much academic success as possible. The following is a list of programs . . .”

**Twelfth**, at page 403 and following Valerie Dunn testifies regarding a Sharon St. John, M. Coun., L.P.C.

At page 012 in the Record is the statement from Ms. St. John.

”July 27, 1998 To Whom it May Concern:

Cory Dunn came into my office for counseling on July 23, 1998. His concern was his children. His wife left him suddenly and unexpectedly taking the children with her to California. After five weeks, she met Cory in Reno and let him take the children home to Utah.

On July 27, 1998, Cory brought his three children into my office with the purpose of helping them with the adjustment of not having their mother living with them. They are comfortable and feel safe with their father. Shay (sic), age seven, and McKenzie (sic) age 4 both stated they did not want to go back to California. They stated grandma Bessie was mean to them and McKenzie said she hit him on the back. They are not acting out because of their mother's absence. They are peaceful children.

Cory is a loving, concerned and committed parent who obviously has the trust of his children. They are secure children who seem to thrive under his loving care. I was impressed with the warmth and tenderness Cory exhibited with them. He is an excellent father . . .

**Thirteenth, is Nancy Dunn,** Valerie's Sister in Law. Valerie Dunn testified at page 406 of the Transcript that "I really liked Nancy."

Nancy Dunn testified beginning at page 013 of the Record as follows:

I am currently working as a social worker for the Division of Child and Family Services for the State of Utah. I have a personal relationship with this family as I am Cory Dunn's Sister-in-Law. I have personally seen the interaction between Cory and Valerie Dunn and their children. Cory has shown time and time again that the children are his top priority. Cory has been the primary caretaker of the children for the majority of the time the family has lived in Utah. I have spoken to Cory many times when he has been caring for the children and cleaning the home. In the past, these children and my child attended the same day care for approximately one year. Cory was the parent who picked up the children and took them home to care for them. He was responsible for the children during the evening hours and for the majority of the weekend hours. Cory has provided the stability in the home for the children. The children appear to be well bonded with Cory and feel secure with him. The children seek out Cory for comfort when they are hurt or sad.

In my opinion, Valerie has fun and enjoys celebrating the holidays and special occasions with her children. However, the everyday needs of the children have been met by Cory. There have been countless times I have spoken to Cory on the telephone during the evening and he has been caring for a sick child or feeding the children. I have seen Cory being very tender and loving with his children. Cory has provided a nice home for the children and they are always clean and well dressed. Cory has shown that he has very strong parenting skills. I believe Cory is a very appropriate parent for these children."

**Fourteenth is Laura Ann Long.** Valerie Dunn testified about her involvement with the

Dunns, and how Laura's daughter spent time in the Dunn home, at page 408.

At page 017 and 018 of the Record, Laura Ann Long, testified as follows:

I have been a neighbor to Cory and Valerie Dunn for 2 ½ years I have an 8 year old daughter that goes to the same school as their 7 year old daughter Shay. (sic) Over the past year and a half the two girls have had sleepovers at each others houses, gone to each other's Birthday parties and played together for hours on the weekends.

It has been my observation that Cory is the main parent figure in the home. I have never met or spoken to Valerie. Cory always called my home or drove over to pick up Shay. it has never been her mother.

Shay came to my daughter's birthday party last November '97 and when the party was over, all the mothers came to pick up their child but Shay's "Dad" came and picked her up. She was very excited to see him. She ran up to him and showed him all the prizes she won at the party.

When Andrea spends time at Cory's and Valerie's house, I always ask her if a parent is home before she can go over to play. When she calls Shay, it was Cory who is always home with the kids. When I ask her what she does at Shay's house, she says that Cory takes her and his 3 kids to the park to play. Cory fixes lunch for my daughter and his children, when my daughter is over at their home playing.

My daughter has never mentioned Shay's mom, only that she is never home when she is there playing.

Cory is a very responsible, loving father. I totally trust my daughter in his care. He loves children around. He treats my daughter like one of his own children. He is kind to my daughter, patient and listens to her stories.

**Fifteenth, Jeff Moore**, lives across the street from the Dunns. Valerie testified about him at page 410 and stated that "He was a very nice guy."

Jeff K. Moore, testified at page 023 as follows:

We have lived across the street from Cory and Valerie Dunn for almost three years. During that time I have gotten to know Cory, as I would frequently visit him at his home. Therefore, I testify of the following facts I observed.

In my observations, it didn't take long for me to realize who was the primary care taker. Ninety five percent of the time the children were outside, Cory would be there with them. I sometimes wondered where Valerie was since she was never outside with them.

I never asked Cory, because it was none of my business. I do recall though he would tell

me Valerie sleeps all the time when she is not at work. He would tell me how he was the only one who ever took care of the kids.

I don't know what kind of mother Valerie was as I never observed her with them. But I do know what kind of a father Cory was. He seemed to be a dedicated and devoted father, spending a lot of time playing with and taking care of their needs."

**Sixteenth is Jackie Chadaz.** Valerie testified about her at page 411.

Jackie Chadaz testified at page 26 as follows:

"I Jackie Chadaz have lived next door to Mr. Cory Dunn on or about Aug of 1995. I have seen Cory with his children in all hours of the day when he was not at work. . . "

**Seventeenth is Roger L. Hulbert** who was a neighbor to the Dunns. Valerie testified about him at page 411 and following of the transcript.

At page 028, Roger L. Hulbert testified as follows:

"This is to testify that I, Roger L. Hulbert through my personal observations witnessed the Plaintiff Cory Dunn in the custody of his children.

It appeared through my limited observances that Cory Dunn was the primary care giver of his children."

**Eighteenth is Carie L. Stone** who had a child the age of Shea and lived in the neighborhood. Valerie Dunn testified at page 41 about how the children played, etc.

At page 030, Carie L. Stone testified as follows:

"I mostly saw the children when Cory was at home. He would be outside working in the yard or in the garage and the children would be outside playing.

When Cory was gone and Val was home, the children were never out playing.

On occasion that I would go over to see if the Dunn's could watch my son for a few hours, Shay would call through the door to see who was there and would only open the door an inch or two to let me know that Cory wasn't home and that Val was asleep and that she (Shay) couldn't let anyone in.

On the times when Cory was home, he (Cory) would let my son stay and play with no problem.

When I was outdoors, it was Cory I saw drive home with the kids in the truck. Val's

vehicle would be gone and I wouldn't see it until the next morning when I left for work.

The home was always clean and neat but it was Cory I saw doing dishes, vacuuming & fixing dinner. I rarely saw Val as I was told she was working . . . “

**Nineteenth is Marc. A. Peterson.** Valerie testified about him at page 413 and stated that their child played with the Dunn children and “played quite a bit. We all sat out on the lawn together and visited.”

At page 033, Marc A. Peterson testified as follows:

“From August of 95 to 96 I lived next door to the above named (Cory Dunn and Valerie Dunn). During this time I got to know Cory very well. I did notice however that Valerie hardly spent time with the kids. It was always Cory who dressed the kids for the sitters everyday. He also took them & picked them up & fed them dinner. I rarely saw Valerie do anything outside the home. Every time I saw Cory he had his little girl with him. Valerie was too concerned with her job to even spend time outside with her own kids.

**Twentieth is the Child Custody Evaluator, Dr. Craig Swaner,** at page 9 of his Psychological Report, stated:

It is apparent to the examiner that Mr. Dunn has been actively involved in the day to day activities of the children, he appears to have been the most involved from the perspective of being the primary day to day care taker. . .

To some extent stereotyped roles have been somewhat reversed in this particular family relationship to a significant degree over the past few years. It appears to the examiner that Mr. Dunn has been more closely associated to the maternal role, while Mrs. Dunn has been most closely associated to the paternal role.

Therefore the discrepancy in the parents' behavior has been reversed. From that point of view it is the examiner's opinion that Mr. Cory Dunn has functioned more closely as the primary care provider when compared to his wife, Valerie.

**Twenty One is Valerie herself,** who testified as follows:

On page 23, Valerie testified that she had done nothing to help her children with their homework for going on a year and one half.

On page 25, Valerie testified that she could not tell the court anything about the math and reading program Shea was in at Valley View Elementary School.



On page 28, Valerie could not even come up with Shea's teacher's name.

At page 28 and following Valerie testified that for almost a whole year and one half, she had not made a single contact with any of Shea's teachers.

At page 31, Valerie can not come up with the names of the friends of her child.

**Twenty-Second is the void** in the case of Valerie Dunn. In this case there is not a shred of corroboration. Valerie Dunn could not get a single neighbor, a girl friend or even an associate to come into Court and say that Valerie had done anything that could be construed as being the primary care giver.

In addition, Valerie Dunn could not get one person from the school to come into Court, even with the power of the subpoena, to say that Valerie had done a single act to further the learning of her children.

Perhaps the best evidence of the truth in this matter is the total void of evidence.

Perhaps there is no evidence to support Valerie's claim that she has been the primary care giver.

As a literal matter there was no evidence whatsoever to support the same except Valerie's claim that she has been the primary care giver.

As a literal matter there was no evidence whatsoever to support the same, except Valerie's own self serving testimony.

Even Valerie's own mother who came to help her daughter on the stand had to admit that she only saw the family on four different occasions, and the latest one was some two and one-half years prior to trial. Note the transcript at page 307.

The real problem with the self serving testimony of Valerie Dunn is that it is impeached with the undisputed evidence.

The tax returns show that Valerie is the career minded professional that was seeking, and frankly succeeding at climbing the corporate ladder.

She could easily have stayed in the area and found work like she sought in California. There are plenty of grocery stores around and she had excelled at Smith's Food and Drug historically.

Valerie has no basis before this Court to say, I had family in California, as Valerie had family in Utah.

Valerie picked her family in California over her family in Utah. She was granted joint legal custody and joint physical custody of the minor children and chose to abandon the children and go to California because it would further her Career.

Hence, perhaps the most glaring reason why it is fair to say that Valerie was not the primary care provider is that she could just leave it all, home, job and children and walk away and pick up a new beginning in California leaving it all behind.

If those children meant as much to her as she claimed, there would be nothing she would trade to be with her children.

Her job, career and ladder were more important than children.

Actions speak louder than words and here the volume is deafening.

### **SUMMARY**

Counsel for the Appellant submits that this matter may be fairly simple to resolve on appeal.

The Trial Court held in Finding of Fact #32, that it would not consider the last eighteen months in the determination of custody.

Counsel submits that that is against the well established case law. Note Paryzek vs.

Paryzek, 776, P.2d 78 (Utah App. 1989) and Elmer vs. Elmer, 107 Utah Adv. Rep. 37 (Utah 1989).

Should this Court agree then there would be no basis for the Lower Court to find that the Mother had been the primary care giver, as it is without dispute that Cory Dunn was the primary caregiver during the subject seventeen months, notwithstanding the fact that the Court, by stipulation, had entered an order granting Joint Legal and Joint Physical Custody of the minor children.

Counsel submits that it is hard to imagine a Mother less concerned and involved with her special needs child, than Valerie Dunn was during the said seventeen month period of time.

Counsel submits that it is pretty well undisputed that Valerie Dunn takes the view that her child Shea Dunn has no problem in school.

This is borne out on page 425 of the transcript, with Valerie Dunn testifying:

Q. (By Mr. Patterson) Beyond Shea's academic needs her scholastic needs, does Shea present to you a special needs consideration? Is she a special needs child past, you know, academic, you know, academically?

A. No. No.

Q. In any way, shape or form?

A. No. She just needs love like the rest of us.

Valerie's conduct has been consistent with this testimony as she takes the position that Shea doesn't have a problem and therefore Valerie is not addressing this "nonexisting" problem.

On the otherhand, as noted above, Shea was so learning challenged that according to Valerie it was suggested to the parties herein by the child's kindergarten teacher and the child's principal that the child be held back.

It is also undisputed that in the first grade the child presented such severe problems that

the School began the special education program and got the child into a specialized program to help Shea with spelling, language, reading and math – all core subjects.

Counsel has a hard time understand how Shea will have any hope for a full and complete life in America without being proficient in these critical core subjects.

As noted in the oral presentation to the Lower Court at the time of the Motion to Alter or Amend Judgment/Motion for a Stay Pending Appeal, that this little girl failed the third grade in California.

Counsel submits that this is what everyone was concerned about, that Mom is pursuing her career and moving up the corporate ladder and the little girl fell by the way side.

Mom's real attitude is best noted in the words she chose to use when asked about Shea's learning disability as found on page 375 of the transcript.

Valerie described Shea's problem as follows: "Yeah. She's got a little bit of a learning problem there. . ."

To Valerie Dunn this is a little problem and little problems take no time or attention and with time they will go away.

Valerie Dunn does not need to call and see how Shea is doing because Shea has just a little problem. Shea is a little girl with a little problem – it is not Valerie's problem.

Valerie called one time to get records for trial and spoke to the principal about that.

This was not a call to see how her child was. This was not a call to see about the things that Valerie could do to help, rather it was a call merely for records for purposes of trial.

Counsel submits that what is most telling about Valerie is that she left a fabulous job, where she was wonderful according to her own testimony at page 333 of the Transcript.

Valerie quits that job out of the blue and moves to California to take a job for \$11.05 per

hour.

The upside of the move, however, was that her work in California provided the opportunity to move up the Corporate Ladder.

Bottom line however, is Valerie picked California and this career, and stipulated with the assistance of Counsel that the children remain in Utah.

Counsel for the Appellant hopes that the following is true, but still he has to question whether this matter was decided on the basis of gender.

There is some support for this found in the Findings of Fact, where the Court suggests that Fathers should be bread winners and Mothers should be home fixing their little girl's hair. Compare Finding of Fact #41 with #33.

As noted in the Psychological Report prepared by Dr. Craig Swaner, the roles in this case were switched, i.e.: Mom was pursuing her career and succeeding in the marketplace and Dad was home taking care of the kids and changing his hours at work in order to be there for the children.

Counsel submits that this Court can determine this matter on its face based upon the Affidavits, as the Lower Court had no advantage to determine the credibility of the witnesses, as all he had was the cold affidavit to consider at the trial level.

Counsel for the Appellant submits that there is no upside in moving the children to California.

California has nothing better than Utah even assuming all of the evidence at the time of trial. There was no evidence at the time of trial that California could provide any service or program that would in any way be superior to the programs already in place in Utah.

In Utah, however, it was undisputed that the children were thriving. They were happy.

They were well adjusted.

The move to California by Valerie was good for Valerie, but it was not good for anyone but Valerie. As noted on page 400 of the transcript, the Evaluator challenged Valerie and her move to California and she responded that she was staying there no matter what as she loved her job.

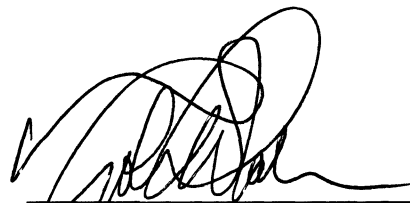
That love of job rings throughout this case, as it was a choice by Valerie to pick Career and California over Children.

### **CONCLUSION AND RELIEF SOUGHT**

Counsel respectfully submits that it was error for the Lower Court to disrupt the thriving, happy and well adjusted children. It was error for the Lower Court to completely overlook the doctors prescription for the minor child that was based on her mental health. It was error for the Lower Court to completely ignore the prior seventeen months of the children's lives in deciding this most critical issue.

Counsel requests that the Court reverse the lower and remand with instructions to award the permanent care, custody and control of the parties minor children to the Petitioner, Cory Dunn.

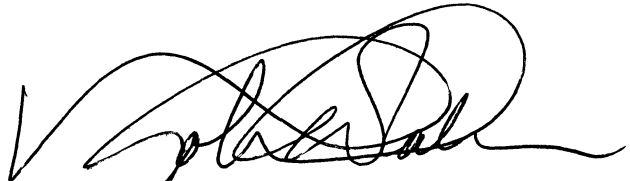
Respectfully submitted this 22<sup>nd</sup> day of December, 2000.

  
\_\_\_\_\_  
JOHN WALSH  
ATTORNEY AT LAW

**CERTIFICATE OF MAILING**

I hereby certify that I caused to be mailed a true and correct copy of the foregoing BRIEF  
OF THE APPELLANT to the Respondent/Appellee by mailing the same to VALERIE DUNN,  
5 MARCIA WAY, #62, ROSEVILLE, CALIFORNIA, 95747.

Dated this 22nd day of December, 2000.

  
\_\_\_\_\_  
JOHN WALSH  
ATTORNEY AT LAW

## ADDENDUM



Tab 1

**Ogden Growth - Development - Recreation**

**3326 ECCLES AVENUE • PHONE 621-5613  
OGDEN, UTAH 84403**

**Licensed Psychologists**

**C. D. SWANER, Ed.D.  
CRAIG K. SWANER, Ph.D.**

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**&**

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**CUSTODY EVALUATION**

**RE: VALARIE DUNN - vs - CORY DUNN**

**Date of report: 11/3/98**

**Psychological Report**

**Reason for referral:**

Cory and Valarie Dunn are currently involved in a custodial proceeding involving their 3 minor children, Shae Dunn age 7 years 6 months, McKinzie Dunn age 4, and Kieffer Dunn age 2.

Mr. and Mrs Dunn have been separated since May 23, 1998, since that time the court has granted Mr. and Mrs. Dunn with temporary joint legal custody. Currently the parties are primarily contesting the physical custody of the children.

**Techniques administered:**

Both Mr. and Mrs. Dunn were provided MMPIs, Sentence Completion Tests, Beck Inventories, Automatic Thoughts Questionnaires, Mental Status Exams, Child Custody Survey Evaluation and Clinical Interviews.

## **DUNN CUSTODY EVALUATION**

### **PAGE 2**

In addition the examiner visited the residence of Cory Dunn at 2808 West 4225 South, Roy, Utah. Mr. Dunn stipulates to the examiner that Valarie Dunn's current residential placement in California would be appropriate for the children from a physical perspective and hence the examiner did not travel to the residence of Valarie Dunn.

In addition, the examiner had the opportunity of individually evaluating the oldest child Shae, Shae was provided measures of intellectual ability, academic performance as well as emotional measures including Kinetic House Tree Family Drawing and Figure Drawing.

The examiner also had the opportunity to observe the children in the company of the natural mother, Valarie Dunn, however for a limited amount of time.

The examiner also had the opportunity to observe the interaction between the children at the residence of Cory Dunn. The examiner also observed the relationship between Mr. Dunn and his children during the home visit in the primary residence.

#### **Test report:**

#### **Background Information:**

Mr. and Mrs. Dunn have been married for approximately 10 years. The relationship has produced 3 children, Shae age 7, McKinzie 4 and Kieffer age 2. Currently the children are residing with Cory Dunn on a temporary basis as per order of the court.

However, Mrs. Dunn is allowed visitation with the children within the State of Utah. There is a restraining order on Valarie Dunn with regards to her taking the children to California at the time of this evaluation.

There are some significant discrepancies between Mr. Dunn and Mrs. Dunn's interpretation of the events which resulted in Valarie relocating to California, while Mr. Dunn remained on Utah.

Valarie Dunn reports to the examiner that she was essentially forced out of the family residence by her husband, Cory Dunn, as a result of difficulties in the marriage. Valarie reports to the examiner that Mr. Dunn was dissatisfied with her and her behavior and was desirous of having her leave the residence. Apparently there were numerous points of contention involving Mr. Dunn's concern that Valarie may have been involved in outside relationships.

As per Valarie's report Mr. Dunn was dissatisfied with her ability to participate in intimate contact, Valarie reports to the examiner that she was very harassed at work and that Mr. Dunn was desirous of having her terminate her employment at Smith's Food Store. Valarie reports to the examiner that there was excessive pressure put on her to discontinue her employment and to leave the family residence.

## **DUNN CUSTODY EVALUATION**

### **PAGE 3**

Mr. Dunn denies these allegations and reports to the examiner that he was desirous of having his wife discontinue the pursuit of the career ladder and to spent more time within the family relationship.

For the most part this is a tale of 2 individuals with 2 separate agendas. It is apparent to the examiner that Valarie Dunn is quite career driven and places career somewhat above family related activities. While in contrast Mr. Dunn has changed vocational activities in order to make himself more available for family interaction.

During the course of the evaluation it was apparent to the examiner that Valarie Dunn, as well as her husband, Cory Dunn have significant interests in overall family unit. They did however perceive the nature of family somewhat differently.

There are numerous affidavits provided to the examiner by neighbors, family members, caretakers and past co-workers that would indicate to the examiner that Mr. and Mrs. Dunn participated much differently than the overall family process.

Mr. Dunn seemed to be more actively involved with the children on a day to day basis. While Valarie was significantly involved with the children and the family activities on a more important day basis. Valarie apparently puts a great deal of effort into holidays, birthdays, vacations and other special days while still attempting to maintain her vocational statue.

Mr. Dunn on the other hand has apparently taken over more of the day to day operations of the family. He has found employed in an area that provided a more flexible work schedule and hence greater availability to the children.

During the last years of their marriage, Mrs. Dunn frequently worked the graveyard shift while Mr. Dunn generally worked the day time hours. This was to some extent however, an effort by both parities to provide for the children without requiring daycare services.

The final break-up between Mr. and Mrs. Dunn was apparently quite emotional and was somewhat unexpected according to both participants. In the finale of the break-up apparently Mrs. Dunn took her children and the family's only operational vehicle to reside with her family in Southern California.

As per Cory Dunn's report, Valarie apparently left the residence without significant clothing for the children and without prescribed medication for the children, and drove to California. Apparently Mr. Dunn was concerned to the point that he called the police and had an all points bulletin put out for the mother and children who were in route to California.

**DUNN CUSTODY EVALUATION**  
**PAGE 4**

Valarie's report is somewhat different, as she reports that she was essentially forced out of the home and in an attempt to find support and stability gathered up her children and traveled to Southern California.

As per Valarie's report she indicates to the examiner that Cory Dunn was aware of her intentions and was glad that she was leaving.

There is a significant discrepancy in relation to the emotional ties between Mr. and Mrs. Dunn. Mrs. Dunn reports to the examiner that she is not currently desirous of getting a divorce from Mr. Dunn. She reports to the examiner that she is madly in love with her spouse and is unable to understand why he is not more receptive to her and her needs.

On the other hand, Mr. Dunn appears to be quite distant with regards to the expression of emotion associated between himself and Valarie Dunn.

It is noteworthy that Cory Dunn is not desirous of reestablishing a relationship with Valarie at this point in time.

There have been some conflicts with regards to visitation since the separation in May of 1998. Apparently there was a short term consideration on Mr. Dunn's part with regards to reconciliation, however that has been dismissed by Mr. Dunn at this point in time.

It is obvious to the examiner Valarie has significant difficulty during the course of this marital break-up and the loss of her interaction with the children. She did have a rather significant emotional break-down when she returned to Utah in an attempt to visit with the children. At that time she learned that there was a restraining order on her with regards to her interaction with the children, there was an altercation, the police were called, Valarie had apparently made suicidal gestures, these gestures are documented in a police report, and at that time, Mrs. Dunn was placed in a crisis care center.

Since that time, Valarie has had other emotional outbursts and these outbursts have occurred in the presence of the children. She has had a tendency to over react to the situation and as a result has caused conflict in the emotional stability of her 3 minor children. There is an affidavit provided to this examiner discussing one such emotional outburst with a day care provider.

Valarie has also contacted the examiner on 2 occasions with hysterical outbursts concerning her limited contact with the children.

In the examiner's opinion Valarie is having significant difficulties in dealing with the lack of contact with Shae, McKinzie, and Kieffer.

## **DUNN CUSTODY EVALUATION**

### **PAGE 5**

During the course of this evaluation, it was obvious to the examiner that Valarie and Cory Dunn have significant emotional conflicts and hence it is apparent that a finalization of the custody dispute is in need of immediate conclusion.

It is obvious to the examiner that the children are being subjected to significant emotional turmoil and pressure and a continuation of this situation could be nothing more than detrimental from an emotional point of view.

Currently the children have significant social emotional support systems available to them from both sides of the extended family. Valarie has a significant support group in California which includes her mother, her father, her siblings and her friends.

Cory Dunn has a significant source of social emotional support in the immediate area that includes his father, 5 siblings and extended family and friends. During the course of the evaluation it was apparent to the examiner that the 3 children have had significant interaction with both extended sides of the family.

Both Mr. and Mrs. Dunn report themselves to be in generally physical condition and hence there appears to be no significant health related difficulties which would impair them participating in a primary custodial position with regards to the 3 minor children.

Using **Rule 4-903**, the of **Uniform Guideline for Custody Evaluation**, the examiner finds the following:

#### **1. The child's preference:**

Given the ages of the children it is in the examiner's opinion inappropriate for the children to make a substantial determination with regards to the adequacy of either parent and his or her ability to provide an appropriate residence for them.

During my discussion with Shae Dunn, the oldest child, she reported to the examiner that she has much love for both of her parents and was unable to indicate to the examiner a significant preference with regards to residential placement.

It is noteworthy, however, that the children have informed a current counselor, Sharon St. John, LCSW, that there have been difficulties during their visits with her mother in California. There are apparent allegations that the children have had some conflicts with their grandmother with whom they have resided for a short period of time. There are allegations that there were some physical contacts between the children and the grandmother of an inappropriate nature.

In addition, the children have apparently reported to Sharon St. John that they are undesirous of residing in California.

## **DUNN CUSTODY EVALUATION**

### **PAGE 6**

These reports were apparently put forth by Shae and McKinzie. This report is provided in an affidavit submitted by Sharon St. John.

During the course of my interaction with the children, they made no report to this effect.

It is noteworthy, however that Sharon St. John has apparently spent more time with the children than that of the current examiner.

#### **2. Benefit of keeping siblings together:**

During the course of my interaction with the Dunn family, both at my office, as well as at the residence of the father, Cory Dunn, it was apparent to the examiner that the children have a very special relationship and that they are significantly bonded to one another. For the most part they play and interact as a unit, it was obvious to the examiner that each child provides a significant amount of support and interaction to the other. There does not appear to be significant conflicts between the children during the course of their day to day activities.

Shae is somewhat older than the 2 younger children and hence takes a leadership role. That is seen by this examiner to be a beneficial aspect of this group's interaction. The children are essentially dependent on one another and have banded together to support one another during this period of significant emotional turmoil.

In the examiner's opinion there is no relevant reason to split up the siblings for any significant period of time.

Therefore, on the basis of this evaluation, it is the examiner's opinion that it is truly beneficial to keep this children together, not only to maintain their emotional support systems but to also encourage further stimulation and development that each provides to the others.

#### **3. The relative strength of the child's bond with one or both the perspective custodians:**

During the course of this evaluation, the examiner found the children to be substantially bonded to each parental figure. It is apparent to the examiner that the children feelings of support and stability within the presence of both Mr. and Mrs. Dunn. The children appear to feel as though they are safe and secure while in the presence of both natural parents. There were no allegations put forth by either parental figure that the children have a lesser or greater relationship with their parents.

It is the examiner's opinion that once the custodial proceeding is concluded the children will maintain a significant and equal relationship with their mother and father.

## **DUNN CUSTODY EVALUATION**

**PAGE 7**

### **4. General interest in continuing previously determined custody arrangements where the child is happy and well adjusted:**

Throughout the course of this evaluation, it was obvious to the examiner that both Valarie and Cory Dunn are interested in providing for the needs of the 3 minor children. The children certainly appear to be happy and well adjusted within their residential situation in Roy, Utah. This residential placement is maintained by Cory Dunn.

There are some allegations that the children are less happy and less well adjusted within the residential situation provided by Valarie Dunn in Southern California. However it is the examiner's opinion that the children are happy and well adjusted within the physical presence of their mother, Valarie Dunn.

A move to California would be viewed by this examiner as being somewhat disruptive to the children as that means a significant change in residence, significant adjustment with support system providers, significant adjustment particularly with regards to Shae with academics. There would also be a significant adjustment with regards to peer relationships.

Shae would have significant difficulty with regards to a change in academic placement. Shae is a special needs child with regards to learning disabilities and limited cognitive ability. She is currently programmed in a special education training program at her local elementary school. She has been evaluated on numerous occasions for appropriate placement. She has apparently adjusted to her current situation and is a child that needs significant structure and organization.

It is the examiner's opinion that it would be detrimental for Shae to change school at this time as she does have a significant program in place. Therefore, it is the examiner opinion that a change to a California residence would be particularly dysfunctional for Shae and somewhat detrimental to the younger siblings as life as they know it has been spent in their current residence.

Again it is apparent to the examiner that the 3 minor children are generally happy and well adjusted.

### **5. Factors relating to the perspective custodian character or status or their capacity of willingness to function as parents including:**

#### **a. Moral character and emotional stability:**

During the course of this evaluation, the 2 parental figures Valarie and Cory Dunn were administered a variety of psychometrics in conjunction with mental status exams and clinical interviews. The results of those evaluations indicate that both parents are generally emotionally stable, these results are congruent with the social histories associated with both natural parents.



## DUNN CUSTODY EVALUATION

PAGE 8

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Both Cory and Valarie have been capable of maintaining goal orientated behavior, they have been generally successful in the major domains of daily functioning. Both Cory and Valarie have been relatively successful in their academic pursuits. They have generally been successful in their social relationships, they have been generally successful in their interpersonal relationships, and they have been generally successful in their vocational pursuits.

Therefore, it is the examiner's opinion that both Cory and Valarie are capable of maintaining generally consistent emotional stability within the primary life domains.

Valarie however, does appear to be prone towards emotional outbursts, this is documented in affidavits provided to the examiner during the course of this evaluation. It has been documented by the examiner, himself, through conversations with Valarie both on the telephone as well as within the confines of the psychological interview and evaluation.

Valarie appears to be an individual that is prone to over reaction, her responses are histrionic in nature, she has a tendency to enter into situations and inflame them without being cognizant of the fact that she is doing so.

Valarie is an individual who is demanding in having her needs met, these very demands have a tendency to drive other individuals away from her rather than towards her. She appears to be generally unaware of that reality. However, it is obvious to the examiner that her husband, Cory Dunn has some of those tendencies in his own right.

When one compares the MMPI Profiles, established on both natural parents, it is apparent that they are quite similar in nature and hence Valarie and Cory have a tendency to feed on one another's behavior.

Both individuals in the examiner's opinion are perceived to be somewhat naive and self-centered, both have a relatively strong need to see themselves in a favorable light. Both have a tendency to lack insight into their interpersonal relationships. Both Cory and Valarie are relatively rigid in their perceptions associated with their marital relationship. Valarie appears to be somewhat more passive and submissive in contrast to Cory where he appears to be mildly domineering. Both individuals have a significant social dependency, they both harbor strong needs for social approval. Neither parent appears to be excessively depressed, neither parent appears to be significantly disturbed with overwhelming anxiety.

Valarie appears to be more prone to wearing her emotions on her sleeve, as opposed to Cory's tendency to be more emotionally controlled.

However, during the course of this evaluation, neither parent reported to the examiner that the other was unfit as a parental figure, neither parent indicated to the examiner that the other was unable to meet primarily custodial needs and responsibilities.

## **DUNN CUSTODY EVALUATION**

### **PAGE 9**

Valarie appears to have a relatively stronger need to be perceived as the harmed individual in comparison to her husband, Cory. Many of Valarie's reports are more histrionic when compared to her husband, Cory.

There does not however, appear to be a significant diagnostic difference between the mother and father.

With regards to moral character, the examiner has some concerns with regards to affidavits provided by some of Valarie's previous co-workers. Her co-workers who are generally administrators have reported Valarie to have a tendency towards deceit and dishonesty particularly within the work place.

Valarie is apparently perceived by her past co-workers as an individual who is prone to do almost anything to promote herself within the career domain. Some allegations have included sexual harassment charges, inappropriate sexual behavior and innuendo and out and out lying.

To the examiner's knowledge this characteristic has not been put forth towards her husband, Cory Dunn.

Hence with regards to this particular category, it is the examiner's opinion that Valarie Dunn could be seen as being marginally less stable than her husband, Cory within the emotional domain.

On the basis of the affidavits provided by Valarie's co-workers, the examiner has some concerns with Valarie's ethical as well as moral attributes.

#### **b. Duration and depth of desire for custody:**

During the course of this evaluation, it was obvious to the examiner that both Mr. and Mrs. Dunn have maintained a significant and sincere desire to provide for the primary custodianship of the children. However, it is also apparent to the examiner that both parent figures have a different perspective with regards to parenting and custodial role.

It is apparent to the examiner that Mr. Dunn has been actively involved in the day to day activities of the children, he appears to have been the most involved from the perspective of being a primary day to day care taker.

Affidavits provided by neighbors, day care centers and relatives are congruent with the perception as well as the report of Valarie and Cory Dunn. Valarie has perceived herself to be substantially in the children's lives and in the examiner's opinion she has been significantly involved however from a different perspective.

**DUNN CUSTODY EVALUATION**  
**PAGE 10**

To some extent stereotyped roles have been somewhat reversed in this particular family relationship to a significant degree over the past few years. It appears to the examiner that Mr. Dunn has been more closely associated to the maternal role, while Mrs. Dunn as been most closely associated to the parental role.

Therefore the discrepancy in the parents' behavior has been reversed. From that point of view it is the examiner's opinion that Mr. Cory Dunn has functioned more closely to the primary care provider when compared to his wife, Valarie.

I don't believe that there is a significant discrepancy between the individuals desire for custody, but there is a discrepancy in their perceived roles.

**c. Ability to provide personal rather than surrogate care:**

Both Mr. and Mrs. Dunn are currently gainfully employed and therefore each would be required to provide surrogate care for the 3 minor children. Currently Valarie Dunn is employed with a major grocery chain in Southern California, her vocational duties are of managerial nature, therefore is the examiner's opinion that her schedule would probably be somewhat inflexible due to the responsibilities associated with managerial position.

In contrast, Cory Dunn is self-employed in the construction domain. Cory currently maintains a general contractor's license, and works with his brother building homes. Cory's schedule is more flexible and hence can be altered more easily to meet the needs to the children.

Therefore even though both parents are gainfully employed and are in need of utilizing surrogate care facility, Mr. Dunn would probably suffer fewer ramifications in altering his schedule to meet the day to day needs and requirements associated with the children.

**d. Significant impairment of ability to function as a parent through drug abuse excessive drinking or other causes:**

On the basis of this evaluation, the examiner has no particular concerns with regards to either parent's ability to function as a parent due to substance abuse allegations.

During the course of this evaluation, neither Mr. or Mrs Dunn accused the other of being significantly involved with drugs or alcohol. Both of the parents do use tobacco, the subject of drug abuse or alcohol dependence was discounted by both Valarie and Cory. There were no allegations put forth by either parent that the other would be unable to participate and function appropriately within the parental role.

**e. Reasons for having relinquished custody in the past:**

**DUNN CUSTODY EVALUATION**  
**PAGE 11**

Neither party has relinquished custody to this point in time. In fact both parents are seeking the primary custodianship of the 3 minor children.

**f. Religious capability with the children:**

There is not any significant incapability with regards to religious pursuits. In the examiner's opinion the children are exposed to appropriate religious development while in the custodianship of both parents.

**g. Financial condition:**

It was put forth by both Mr. and Mrs. Dunn that there have been significant financial difficulties during the course of their marital relationship. It was put forth by both Valarie and Cory that they have significant indebtedness to the Internal Revenue Service. It was put forth by Valarie Dunn that there have been significant difficulties with overall credit. This observation was confirmed by Mr. Dunn.

At the time of this evaluation, both parents are gainfully employed and are probably capable of meeting the needs and responsibilities from a financial point of view.

It is apparent to the examiner however that Valarie Dunn probably makes more money when compared to her husband, Cory Dunn, due to the nature of her employment. Valarie is employed in a managerial position and does make a substantial salary. Cory's salary could probably be variant as result of his self-employment status.

During the course of the home evaluation at Mr. Dunn's residence, it was obvious to the examiner that the children have an adequate residence, appropriate nutrition and adequate clothing at their disposal. The children do not appear to be notably deprived in the basics of day to day living.

The examiner also believes that the children would be adequately provided for from a basic needs perspective within the custodianship of the natural mother, Valarie Dunn.

**h. Evidence of abuse of the subject children or spouse:**

There were no allegations put forth by the participants involved in this evaluation concerning child abuse or spousal abuse.

There were reports put forth by both Cory and Valarie Dunn with regards to altercations between one and another. Apparently towards the end of the marital relationship there were some pushing and shoving matches between Valarie and Cory.

## **DUNN CUSTODY EVALUATION**

### **PAGE 12**

There was apparently a significant altercation between Mr. and Mrs. Dunn when Mrs. Dunn was served with a restraining order during the course of one of her visits. That altercation was documented by the local police. Mrs. Dunn apparently became extremely distraught, she had apparently become suicidal and required crisis intervention.

As far as the examiner can determine based on Mr. and Mrs. Dunn's reports there have been no altercations that have reached the magnitude of spousal abuse.

#### **i. Any other factors deemed important by the evaluators, the parties or the court:**

Over the course of the current custodial evaluation, the examiner finds there to be significant conflict and turmoil between Mr. and Mrs. Dunn. Neither parent appears to be capable of putting their needs second to the needs of the 3 minor children. Both parents in the examiner's opinion, are behaving in a relatively immature and in sightless manner with regards to the children's overall needs for stability, security and reduced emotional conflict.

There is a certain degree of selfishness on both parents' part and this does nothing more than further the detrimental effects associated with a divorce proceeding. In the examiner's opinion both parent are in need of individualized counseling opportunities to more successfully deal with their current situation and the needs of the associated children.

Further squabbling will do nothing more than undermine the security and stability of the individuals that they seek to protect and care for.

#### **Conclusions:**

On the basis of this evaluation conducted with Cory Dunn, Valarie Dunn and their 3 minor children, Shea, McKinzie and Kieffer, it is the examiner's opinion that both natural parents are capable of meeting the needs and responsibilities associated with primary custodianship.

At the time of this evaluation, Cory and Valarie Dunn have joint legal custody of the children. The examiner believes that there is no particular need at this time to adjust joint legal custody issues. The most significant aspect of this evaluation is to determine appropriate physical custody of the aforementioned minor children.

Based on this evaluation, it is apparent to this examiner that the 3 minor children would be best served remaining in the primary residence of their natural father, Cory Dunn.

With the children remaining in their current physical placement they will be subject to less adjustment difficulties. It is obvious to the examiner that the children are adjusted and happy within their current residence. A significant change in residence particularly that to a different state would be in the examiner's opinion significantly detrimental at this point in time.

**DUNN CUSTODY EVALUATION**  
**PAGE 13**

The change in residence would be most significantly felt by the oldest child, Shae, due to her academic programming, her social relationships and her overall perception of stability.

There were no significant indications in the examiner's opinion to separate the children as it was found by the examiner to be beneficial for the children to remain as a group for the purpose of providing one another social support and stability.

In addition the children have apparently indicated to their current counselor, Sharon St. John that there were unhappy within the residence in California. The examiner could find no significant purpose at the time of this evaluation for the children to relocate to an out state of residence.

In addition it is the examiner's opinion that Cory Dunn has essentially functioned as the primary care taker for the children's day to day needs over the course of the last few year.

Valarie has fled to California to seek significant social emotional support from her family and although that is seen by the examiner to be beneficial for Valarie, I do not see that being significantly beneficial for the children.

To uproot the children from a domain that they find secure, safe and stable would be a disadvantage to the children, in the examiner's opinion.

Throughout the course of this evaluation, it is the examiner's opinion that both Cory and Valarie Dunn are capable of meeting the needs of the children on an individualized basis. Neither Mr. or Mrs Dunn appear to be a significant threat in the examiner's opinion to the children's well being. Both natural parents have exhibited significant stability and responsibility in all of the major life domains.

There were no concerns in the examiner's opinion with regards to bonding between the parents and the 3 minor children. The children appear to feel safe and secure within the immediate relationship with their parents. There were no signs of distress observed by the examiner between the children and their parents. At no time did the children indicate to the examiner that they were concerned with their safety or security in the presence of Mr. and Mrs. Dunn.

With regards to interaction, it is imperative in the examiner's opinion that both Cory and Valarie actively participate with their children on a regular basis. Unfortunately the situation is somewhat confounded by the fact that Mrs. Dunn resides in California and Mr. Dunn resides in Utah.

Given the fact that Shae is currently involved in a significantly structured and programmed setting, it would be inappropriate for her to leave her academic pursuits on a regular basis for any extended period of time and hence visitation should be provided to Mrs. Dunn for an extended period during the summer months and also an extended period during the Christmas Holidays.

**DUNN CUSTODY EVALUATION**

**PAGE 14**

Valarie should also have opportunities during the spring break period.

With regards to the 2 boys, McKinzie and Kieffer, Valarie should be provided more access for longer periods of time until they become involved in an academic program.

In the examiner's opinion Valarie is a loving mother and quite capable of meeting her children's needs, as well as providing for them in a responsible manner.

The obligations associated with transporting the children from one residence to another should be jointly shouldered by both Mr. and Mrs. Dunn.

Thank you for the opportunity of evaluating the Dunn family, I hope the included comments will be beneficial in planning for the future placement and needs of Shae, McKinzie and Kieffer.

Respectfully

A handwritten signature in black ink, appearing to read "Craig K. Swaner". The signature is fluid and cursive, with the first name "Craig" being more prominent.

Craig K. Swaner, Ph.D.

CKS/jls

Tab 2



1           A     Yes, I do.

2           Q     Okay. And I want you to tell - tell this Court what  
3 distinguishes, you know, why? I mean, let's - let's assume  
4 that you and Cory are both good parents.

5           A     Uh-huh (affirmative).

6           Q     But what distinguishes the two? What - what  
7 considerations and factors do you want the Judge to, you know,  
8 specifically focus on and identify?

9           A     Okay. I have always been there for the kids. The  
10 kids are, and always have been, my world. They're - they are  
11 the most important thing to me in the whole world. I have  
12 always been involved in their life. I have always cooked for  
13 them. I have always cleaned for them. I have always shopped  
14 for them. It did not start in May of '98. It started when  
15 they were born. I did not - I do not have to, nor will I ever  
16 have to, learn how to do my daughter's hair or learn how to  
17 cook or start putting the kids into gymnastics to prove that  
18 I'm a good parent. I am a good parent. I have been since they  
19 were born. I have been bonded to those children since they  
20 were born. I have been involved in their lives since they were  
21 born. I don't have anything to prove to anybody. I know in my  
22 heart that I am a wonderful mother, and those kids adore me.  
23 And I have been their world, as well as they are mine.

24                   I am - I am - how to word - I applaud Cory for  
25 finally standing up and becoming a part of the kids' life. I

1 wish it would have happened when - in the beginning and not  
2 starting on May 23<sup>rd</sup> or August 5<sup>th</sup> or whatever when he took the  
3 kids. It should have happened then. It shouldn't have had to  
4 have to be a show to put on for somebody. To say, hey, this is  
5 what I can do. It's - he wasn't doing it before. He was never  
6 - if he was doing it before, then why did he have to learn how  
7 to do Shea's hair. He would already know how to do Shea's  
8 hair. If he was doing it before, why is everything that he's  
9 doing he's trying to mimic me. He's trying - everything that  
10 he's doing now as a parent he's trying to do what I did.  
11 That's why the kids belong with me because I am the one that  
12 have always been there for them. It's always - it has always  
13 been me. And I don't care if you had 50 more people write a  
14 letter saying that they saw my children playing out with Cory.  
15 Well, congratulations. Cory went outside and played with his  
16 children. That's what a father should do. I applaud you.  
17 That was great. But I'm still the one that took care of them.  
18 I'm still the one that was there for their needs every day on  
19 day-to-day basis.

20 Q Let me ask you this. Dr. Swaner identifies or, I  
21 think, relates in his letter that a move to California would be  
22 disruptive. And that it would, you know, that it would -

23 A You know what's been -

24 Q Create some interference or, you know, some  
25 disruption in these children's lives to relocate. What

Tab 3

**PHILIP C. PATTERSON - 2540**  
**PATTERSON BARKING THOMPSON & LARKIN**  
**Attorneys for Respondent**  
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IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT

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CORY DUNN,	)	DECREE OF DIVORCE
Petitioner,	)	
vs.	)	Civil No. 984901556 DA
VALERIE DUNN,	)	Judge Parley R. Baldwin
Respondent.	)	

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FEB 28 2000

This case was tried to the court without a jury on December 6 and 7, 1999. The petitioner was present and represented by his retained attorney of record John Walsh. The respondent was present and represented by her retained attorney of record Philip C Patterson. Based upon the sworn witness testimony, the exhibits introduced into evidence, the record on file in this action and the concurrently entered Findings of Fact and Conclusions of Law,

THE COURT ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. Each party is awarded a Decree of Divorce from the other with each Decree of Divorce

to become final upon entry.

2. Mrs. Dunn is awarded the sole legal custody of the parties' three children whose names and birth dates are as follows:

SHAE LYNN DUNN (DOB: 1-25-91)  
MACKENZIE JAMES DUNN (DOB: 6-28-94)  
KIEFFER CHARLES DUNN (DOB: 6-12-96)

3. The parties are bound by the visitation and access schedule and advisory guidelines within UCA §30-3-32 et seq (1993, as amended). A copy of this court's summarized visitation schedule and a copy of the cited visitation and access statute is attached to this Decree of Divorce as Exhibit "A".

4. The parties shall divide equally between them each of the children's school scheduled vacations.

5. The parties shall share equally the costs incurred for transporting their children between California and Utah during the children's California school scheduled vacations when the petitioner exercises visitation.

6. If the parties cannot resolve an appropriate visitation and access schedule for Mr. Dunn, either party may return these visitation and access issues to the court for additional hearing before one of the court's Domestic Relations Commissioners. The court's intent is to allow the parties to set out a visitation and access schedule for Mr. Dunn which is the product of mutual agreement.

7. Mr. Dunn shall pay to Mrs. Dunn a Base Child Support Award of \$383.88 each month beginning February 2000. Unless the parties otherwise agree in writing, Mr. Dunn's Base Child

Support Obligation shall be paid in equal instalments with each instalment due not later than the 5<sup>th</sup> and 20<sup>th</sup> day of each month. A copy of a Sole Custody Child Support Worksheet is attached to this Decree of Divorce as Exhibit "B".

8. When any one of the parties' three children obtains eighteen years of age or graduates from high school during her/his normal and expected year of graduation, whichever event last occurs, Mr. Dunn's ongoing Base Child Support Obligation shall be terminated automatically for that child unless Mrs. Dunn establishes special dependency needs for that child as provided by statute.

9. The Base Child Support Award to be paid by Mr. Dunn shall be reduced by 50% for each child for time periods during which each child is with Mr. Dunn by court order or by written agreement of the parties for at least 25 of any 30 consecutive days. If any one of the parties' three children is a recipient of AFDC benefits, any agreement by the parties for the reduction of child support during extended custodial access must be provided to the administrative agency. Normal weekend and holiday visits/access by Mrs. Dunn will not be considered an interruption of the consecutive day requirement.

10. Mrs. Dunn shall continue to maintain existing family level accident and health insurance coverage for Shae, Mackenzie and Kieffer. Mrs. Dunn must provide this coverage for so long as such coverage for so long as such coverage is employer provided or is otherwise available to her at reasonable cost.

11. Each party must share the out-of-pocket costs of the health and dental insurance premiums actually paid by Mrs. Dunn for the children's portion of the accident and health

insurance premium. The children's portion of this premium is calculated by the parties' dividing the premium amount actually paid by Mrs. Dunn by the number of persons covered under the policy and multiplying the result by the number of children in this case. Each party's share is one-half of the amount last obtained. Mr. Dunn's share of the children's portion of the accident and health insurance premium actually paid by Mrs. Dunn shall be added to Mr. Dunn's ongoing base child support obligation.

12. Pursuant to UCA §62A-11-502, the Base Child Support Obligation to be paid by Mr. Dunn is subject to state administered wage withholding procedures.

13. Pursuant to UCA §78-45-7.16, the parties must share equally the reasonable work related/education related child care expenses actually incurred by them. When an actual expense for child care is incurred by one of the parties, the other party shall begin paying his/her share on a monthly basis immediately upon presentation of proof of the child care expense. If child care ceases to be incurred, that parent may suspend making monthly payments while the child care expense is not being incurred and may do so without obtaining a modification of the child support order.

14. A parent who incurs a child care expense must provide to the other parent written verification of the cost and identify of the child care provider. Each parent must notify the other of any change of child care providers or the scheduled monthly expense for child care services within thirty (30) days from the date of any such change.

15. Each party must provide all third party child care providers with the name, current address and telephone number of the other parent. Mrs. Dunn must provide Mr. Dunn with the

name, current address and telephone number of each child care provider used by her. The same disclosure obligation applies equally to Mr. Dunn.

16. The parties must share equally all reasonable and necessary uninsured medical expenses, included deductibles and co-payments, incurred for any one of their three children. Mrs. Dunn must provide verification of insurance coverage to Mr. Dunn. Mrs. Dunn must likewise notify Mr. Dunn of any change of insurance carrier, premium or benefits within thirty (30) days of the date she first learned or should have learned of the change.

17. When either parent incurs medical expenses for any one of their children, that parent must provide the other with written verification of the cost and payment of medical expenses to the other parent within thirty (30) days of payment. The party incurring the medical expense for any one of their children may be denied the right to receive credit for the expense or to recover the other's share of the expense if that parent fails to comply with controlling terms and provisions set forth within this numbered paragraph and paragraph 16 of this Decree of Divorce.

18. UCA §78-45-7.2 provides that parents are to be notified of the opportunity to modify child support orders under any of the following circumstances:

(a) when a child support order has not been modified within the previous three years and if the court, taking into account the best interests of the children, determines that the new child support award would be a difference of 10% or more from the prior amount ordered, or

(b) a change of circumstances has occurred since the entry of the last child support award.



A substantial change in circumstances may include:

- i. material changes in custody;
- ii. material changes in relative wealth or assets of the parties;
- iii. material changes of 30% or more in the income of the parents;
- iv. material changes in the ability of the parents to earn;
- v. material changes in the medical needs of any one of the children, and
- vi. material changes in the legal responsibilities of either parent for the support of others.

For any of the substantial change of circumstances identified within paragraph (b) above, the change should result in a difference of 15% or more between the amount of child support previously ordered and the amount that would be required under the guidelines.

19. Beginning with year 2000, Mrs. Dunn shall receive the federal income tax dependency deduction for Kieffer and for Mackenzie and Mr. Dunn shall receive the federal income tax dependency deduction for Shae.

20. Mr. Dunn is awarded the sole possession and ownership of the Roy, Utah family home, together with any equity that this real property may possess, free and clear from all claims of Mrs. Dunn. Mrs. Dunn shall convey to Mr. Dunn her ownership interest in the Roy, Utah family home by appropriate quit-claim deed.

21. Each party is awarded the personal property, to include household furniture and furnishings as well as personal effects and belongings which each party now possesses, subject to the following items of personal property which are awarded to Mrs. Dunn:

- (a) the living room black couch and two chairs,
- (b) the dining room set,
- (c) the large screen television,
- (d) all crystal glassware, platters, etc.
- (e) the master bedroom dresser set,
- (f) Mrs. Dunn's mountain bike, and
- (g) Mrs. Dunn's personal effects and belongings which remain in the Roy, Utah family home.

22. Each party is awarded the personal property, to include motor vehicles, which that party individually acquired after the parties' May 23, 1998 separation.

23. Mr. Dunn shall be responsible for the following financial obligations and liabilities and shall hold Mrs. Dunn safe and harmless therefrom:

- (a) the secured lender obligation against the Roy, Utah family home.
- (b) the Anderson Lumber account,
- (c) the Kwall Howells account,
- (d) the Utah Power account,
- (e) the Questar account,
- (f) the Internal Revenue Service income tax liability,
- (g) the G.E.C.C. obligation, and
- (h) the child support arrearage account now being paid by Mr. Dunn through the Utah Office

of Recovery Services.

24. Mrs. Dunn shall be responsible for the following financial obligations and liabilities and shall hold Mr. Dunn safe and harmless therefrom:

- (a) the Arizona State Tax Commission income tax liability,
- (b) the McKay Dee Hospital account,
- (c) the Credit Bureau of Ogden collection account,
- (d) the account balance owed to Paul D. Hopkins, DDS, and
- (e) the Bonneville Collections account.

25. Unless otherwise specifically designated within this Decree of Divorce, each party shall assume and satisfy those financial obligations and liabilities incurred by him or her following their May 23, 1998 separation.

26. Pursuant to UCA §15-4-6.7 and UCA §30-3-5(1)(c), each party shall provide a copy of the Decree of Divorce entered in this action to each provider/creditor who has or will provide health care services to any one of their children. A health care provider who has provided services to any one of the parties' three children may not make a claim for unpaid medical expenses against the parent who has paid in full his or her share of the medical or dental expenses required to be paid by that parent under this Decree of Divorce. To implement the statutory provisions cited within this numbered paragraph, each party must:

- (a) send a copy of the Decree of Divorce to the health care provider for the particular medical service,
- (b) notify the health care provider of that party's current address,
- (c) inform the billing/unpaid provider that it may not make a claim for unpaid medical

expenses against that party if that party has paid in full the share of that party's medical and dental expenses required to be paid by that parent under the Decree of Divorce, and

(d) inform the billing/unpaid provider that it may not make a negative report under UCA §70-7-107 et seq or make a report of the debtor's repayment practices or credit history under Title VII, Chapter 14, Credit Information Exchange regarding a parent who has paid in full that share of the medical and dental expense required to be paid by that parent under this Decree of Divorce.

27. The parties are required to provide a copy of this Decree of Divorce to each creditor for each outstanding obligation identified within this Decree of Divorce which names the petitioner and respondent as joint obligors/debtors. The parties must cooperate fully with each other and are required to notify in writing each joint creditor/obligee of the court ordered responsibility between the parties for each joint obligation/debt. The required notice to each joint creditor must include:

(a) the current mailing address for the petitioner and for the respondent,

(b) information to the joint creditor that the petitioner and respondent are each entitled to receive statements, notices and correspondence required by law or by terms of the contract, and

(c) information to the joint creditor that the creditor may not make a negative credit report under UCA §70C-7-107 and may not make a report of repayment practices or credit history under Title VII, Chapter 14, Credit Information Exchange regarding the joint obligation because of non payment by the party required to pay the debt unless the joint creditor has first made a demand for payment on the party who was not required to pay the debt.

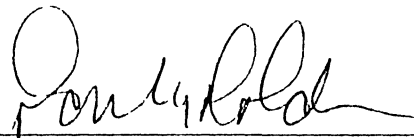
28. Neither party is awarded alimony against the other, both now and in the future.

29. Each party is awarded a percentage interest in any retirement program maintained by the

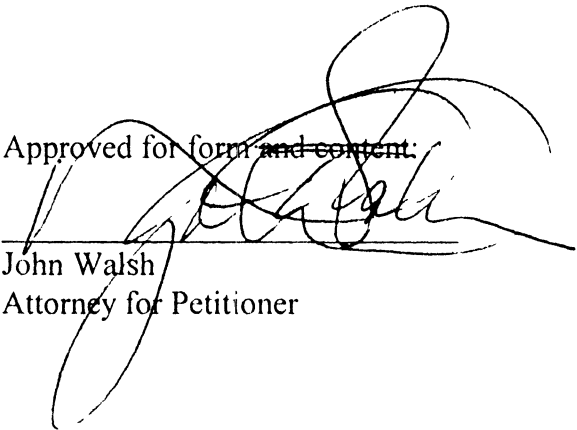
other party consistent with those standards identified in the **Woodward v. Woodward** Utah Supreme Court decision.

30. Each party shall pay attorney fees and costs which he or she has individually incurred in this action.

DATED this 25 day of February, 2000.

  
\_\_\_\_\_  
THE HONORABLE PARLEY R. BALDWIN  
District Court Judge

Approved for form and content:

  
\_\_\_\_\_  
John Walsh  
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IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH

WEBER COUNTY, OGDEN DEPARTMENT

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CORY DUNN,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
Petitioner,	)	
vs.	)	Civil No. 984901556 DA
VALERIE DUNN,	)	Judge Parley R. Baldwin
	)	
Respondent.	)	

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FEB 28 2000

This case was tried to the court without a jury on December 6 and 7, 1999. The petitioner was present and represented by his retained attorney of record John Walsh. The respondent was present and represented by her retained attorney of record Philip C. Patterson. Based upon the sworn witness testimony, the exhibits introduced into evidence and the record of file in this action, THE COURT ENTERS THE FOLLOWING:

**FINDINGS OF FACT**

1. This action was commenced on July 21, 1998. The respondent thereafter timely filed an answer and counterclaim to the petitioner's complaint for divorce.
2. Each party was a resident of Weber County, Utah at the time of and for more than three months prior to the commencement of this action.

3. The parties were married to each other on January 7, 1989.

4. The parties have been separated continuously from each other since May 23, 1998 as a result of irreconcilable differences which have made impossible the continuation of their marriage.

5. Three children have been born as issue of the parties' marriage whose names and birth dates are as follows:

SHAE LYNN DUNN (DOB: 1-25-91)  
MACKENZIE JAMES DUNN (DOB: 6-28-94)  
KIEFFER CHARLES DUNN (DOB: 6-12-96)

6. Following the parties' marriage in Nevada during year 1989, the parties moved to Arizona where the parties purchased a home and Mr. Dunn accepted a management store director position with Smith's Food & Drug Stores. Mr. Dunn's store director's employment included guaranteed bonuses.

7. Mrs. Dunn likewise accepted employment with Smith's Food & Drug Stores upon the parties' relocation to Arizona.

8. Mr. Dunn was previously married, had a daughter from that marriage and was subject to a court ordered child support payment obligation.

9. Prior to the parties' marriage, Mr. Dunn owed back taxes to the Internal Revenue Service. The parties failed to file state and federal income tax returns while they resided in Arizona. The parties have accordingly accrued a substantial tax obligation to the State of Arizona and to the IRS. These liabilities continue to grow with penalties and interest. The State of Arizona continues to enforce its tax liability by garnishing a small percentage of Mrs. Dunn's employment income.

10. The petitioner's exhibits at trial identified the IRS income tax liability to be \$145,000.00 and the Arizona State income tax liability to be \$13,500.00.

11. During June 1992, the parties physically separated. After working briefly in California, Mr. Dunn relocated to Utah during June 1992. Mr. Dunn's extended family resides in Utah. Mr. Dunn thereafter remained in Utah where he and his brother began a residential construction business.

12. Mrs. Dunn remained in Arizona with their daughter Shae following the parties' June 1992 separation where she continued her employment with Smith's Food & Drug Stores.

13. The parties reconciled during October 1992 with Mrs. Dunn and Shae moving to Utah. The parties' Arizona home was lost through secured lender foreclosure.

14. Mrs. Dunn obtained employment with Smith's Food & Drug Stores upon her October 1992 arrival in Utah and Mr. Dunn continued his residential construction business with his brother.

15. The parties' remaining two children Mackenzie and Kieffer were born following the parties' relocation to Utah.

16. After assuming residency in Utah, the parties made some attempt to provide for the personal care of their children by making adjustments to their employment schedules. Until the parties' May 23, 1998 final separation, the parties used the day time services of at least three child care providers.

17. Mrs. Dunn's Utah employment income with Smith's Food & Drug Stores was more stable than the income Mr. Dunn earned from his construction business activities. The parties' 1997 joint income tax return shows only income from Mrs. Dunn's employment. This 1997 income tax return was prepared by Mr. Dunn's father.

18. The testimony is in conflict over the amount of time Mr. Dunn worked. Mr. Dunn claimed that he worked around Mrs. Dunn's employment schedule so that he could provide care for the children. Mr. Dunn claimed that Mr. Dunn worked long daytime hours with the result that he



was present to care for the children only when she worked the late shift but that he was not available when she worked the day shift.

19. The parties acquired their Roy, Utah home through private financing with the seller. Presumably, the parties pursued private financing because of their inability to obtain funding through a financial institution because of past credit problems. Mr. Dunn helped with the down payment by providing what is commonly referred to as “sweat equity”.

20. Mr. Dunn has continued to occupy the Roy, Utah home with Shae, Mackenzie and Kieffer following the entry of the court’s August 31, 1998 temporary child custody award.

21. The majority of Mr. Dunn’s extended family reside in Utah and had regular contact with the parties’ prior to their separation. This contact with Mr. Dunn and the children has continued after the parties separation. The parties and the children have likewise enjoyed a positive relationship with Mrs. Dunn’s extended family which is based in California.

22. The parties’ children Shae, Mackenzie and Kieffer are well adjusted. Although Shae is somewhat learning challenged, she has progressed well in school. Both parties agree that the intellectual and learning capabilities of Shae described by Dr. Swaner in his November 3, 1998 Child Custody Evaluation Report do not describe the child the parties know.

23. Shae has progressed in school with the assistance of an academic program specifically worked out for her within the Weber County School District elementary school she attended, with the help of her former school principal, with her mother and father initially, and with her teachers.

24. Under the August 31, 1998 temporary child custody award which placed the children with Mr. Dunn in Utah, Mr. Dunn became very involved with Shae’s Utah elementary school and with her Utah school teachers. A teacher described Mr. Dunn as going above and beyond what most

parents contribute. [redacted] has also been enrolled in the Scottish Rights Public School Program. This program assists grade school children who have special education needs. When this case was tried, Shae was attending Scottish Rights once each week.

25. Shae does very well in her social activities and is a very happy and outgoing child. Mackenzie is now in kindergarten and appears to be extremely bright. Mackenzie is doing well in school. Kieffer has yet to begin school.

26. Sometime during May 1998, what had been a somewhat tumultuous time between the parties escalated in severity. On or about May 23, 1998, the parties determined that they would physically separate. Mrs. Dunn described the parties' circumstances as continual fighting to a point that Mr. Dunn was striking the home walls with his fist. After Mr. Dunn left the Roy, Utah home with some of his belongings, Mrs. Dunn took her children and the only automobile owned by the parties and drove to California to be close to her family. She believed it was an issue of safety. She was afraid of Mr. Dunn. She claims, however, she did not want a divorce.

27. Mr. Dunn claims that he likewise did not initially want a divorce. By the time this case was tried, the parties were totally unable to communicate with each other and had stopped trying.

28. Sometime during July 1998, the parties agreed that Mr. Dunn should be with the children for a period of time. The children were thereafter transported from California to Utah.

29. Shortly after receiving the children, Mr. Dunn filed this divorce action and on July 23, 1998, Mr. Dunn sought a temporary restraining order and order to show cause from this court by which he sought to obtain the temporary legal and physical custody of Shae, Mackenzie and Kieffer. His allegations included mistreatment of the children at Mrs. Dunn's grandmother's home. He alleged that he had been the children's primary care provider during the past several years, that Mrs.

Dunn was career oriented and was more concerned with her career than caring for the children. Mr. Dunn further alleged that he had selected the residential construction industry for employment because his work schedule would allow him the time to become the children's primary care provider. Other allegations made by Mr. Dunn were contained in the affidavits filed by him as part of his temporary restraining order and order to show cause proceeding.

30. At the August 5, 1998 order to show cause hearing, the court awarded the temporary legal custody of Shae, Mackenzie and Kieffer to each of the parties and placed the temporary physical custody of the children with Mr. Dunn in Utah. The parties' three children have been physically based in Utah with Mr. Dunn since the entry of this court's August 31, 1998 temporary custody award.

31. Each parent is a fit and proper person to be awarded custody of each of their three children. Each parent has shown a loving and caring commitment for the children.

32. The circumstances of this divorce action present added scrutiny because of the temporary child custody order that was in place from August 5, 1998 until this case was tried during the first week of December 1999. It is clearly not appropriate to the children or to the parties for the court to determine child custody based only on the period of time during which the temporary custody order was in place. Had Mrs. Dunn opted to file for divorce requesting temporary custody of the children and of the home, clearly she would have been granted the same and the court would be evaluating the case entirely differently. She could have also filed the action in California after establishing residency, presumably similar to the three month residency requirement for Utah. She chose not to do so. However, the court will not hold the available but unacted upon courses of action to her disadvantage.

33. In determining custody, it is important for the court to consider the best interests of the three children. During the course of the marriage and while the parties were together, Mrs. Dunn and not Mr. Dunn was the primary caretaker for the children. The children were very bonded to their mother, especially the youngest child Kieffer. It was Mrs. Dunn who performed the routine daily tasks with and for the children. Mr. Dunn certainly assisted and had substantial impact on providing and assisting with the children. A good example involved combing Shae's hair. Mr. Dunn in his affidavit stated that he awakened the children each morning to bath them, feed them, take them to school and so on. However, he testified that after receiving temporary custody of the children he went to great lengths to learn how to comb Shae's hair and how well he has developed that skill. Prior to the entry of the August 1998 temporary custody order in this action, Mrs. Dunn was providing most of the care giving.

34. Much has been made in this case regarding the neighborhood in which the children live and the friendships the children have developed. The court has received evidence that the Roy, Utah home of the parties is in grave jeopardy of being foreclosed. The payments are in arrears. Mr. Dunn testified at trial that the Office of Recovery Services has a judgment lien against the family home for child support arrearage owed by Mr. Dunn. Mr. Dunn additionally testified that the Internal Revenue Service has placed a federal tax lien against the Roy, Utah home totaling \$140,000.00 +/- . Based on the incomes of the parties, the likelihood is minimal that the parties can continue to maintain the Roy, Utah home.

35. Each party will act in the best interests of Shae, Mackenzie and Kieffer. School programs in other schools can be as effective as the programs developed by the Weber County elementary school which Shae has attended if both parents continue with active participation.

Because of the financial issues surrounding the parties, the likelihood is great that Shae will end up at another school independent of the child custody issue in this case.

36. Mrs. Dunn has and will continue to allow Shae, Mackenzie and Kieffer frequent and continuing appropriate contact with Mr. Dunn. Mrs. Dunn has transported the children from California to Utah both prior to and during the entry of the court's August 1998 temporary child custody award.

37. Although Mr. Dunn has made arrangements for the children to visit Mrs. Dunn from August 1998 forward, Mr. Dunn disconnected long distance telephone service at the Roy, Utah home thereby removing the most important contact opportunity between Mrs. Dunn and her children. Mr. Dunn terminated long distance telephone services because of his financial difficulties. Mrs. Dunn was compelled to provide calling cards to maintain contact with her children. Mrs. Dunn could have used collect calling procedures, but by disconnecting long distance telephone services, Mr. Dunn took away a very important contact which did not allow a regular connection between mother and children. Mrs. Dunn has and will continue to provide Mr. Dunn more frequent and continuing contact with their children than has Mr. Dunn.

38. It is critical that the children remain together. Shae is seven years old. She is two years older than Mackenzie and four years older than Kieffer. She is the leader among the three of them. It is in the best interests of the three children to retain the relationship that binds them together.

39. Shae will be able to find appropriate special attention through a school program administered in the State of California. Shae can also benefit by attending a Scottish Rights program administered in California which is available in the area where Mrs. Dunn resides.

40. Each of the parties have extended families that have a love for the parties' three children.

Although the extended family of Mr. Dunn and Mrs. Dunn reside in different states, Mrs. Dunn will more actively pursue allowing the children to spend time and participate with the extended family of Mr. Dunn.

41. Mr. Dunn can best serve his children by maintaining a close contact with them and by gaining a greater ability to provide for their financial needs. He has avoided the payment of taxes, has had properties foreclosed on, and has demonstrated a lack of financial responsibility for his now emancipated daughter from his first marriage.

42. Mr. Dunn has shown a sincere effort to care for the physical and emotional needs of Shae, Mackenzie and Kieffer since he was awarded their temporary custody during August 1998. Although sincere, part of Mr. Dunn's motivation was to assist in doing anything in his power to properly prepare for the trial in this case and do all in his power to obtain the benefit of those actions at trial. Mr. Dunn's continuing care for the children following the entry of the Decree of Divorce in this case should be as sincere and to the benefit of the children.

43. Mr. Dunn is now employed by Asael Farr & Sons Company, as a delivery route driver. Mr. Dunn is paid at the scheduled rate of \$8.00 per hour and works a minimum forty hour work week. The petitioner is paid twice each month. The petitioner's scheduled gross monthly income is \$1,386.00 based upon a forty hour work week. Accident and health insurance coverage is not maintained presently by Mr. Dunn through his employment.

44. Mrs. Dunn is now employed by Raley's, a California grocery store chain, as a non supervisory employee in the non-foods department of one of its grocery stores. Mrs. Dunn is paid at the scheduled rate of \$11.05 per hour and works a forty hour work week. She is paid each week. Mrs. Dunn's gross monthly income is \$1,915.33 based on a forty hour work week.

45. Accident and health insurance coverage is maintained by Mrs. Dunn through her employment. This coverage is employer provided at no cost to her.

46. Shae and MacKenzie are enrolled currently at Quail Glen Elementary School in Sacramento, California. This California elementary school uses all year track scheduling. Mrs. Dunn has committed to Mr. Dunn that each of the children will attend school within the same track. The parties have agreed that they will divide equally between them each of the children's school scheduled vacations. The parties have likewise agreed that they will share equally the costs incurred for transporting the children between California and Utah during the California school scheduled vacations when Mr. Dunn exercises visitation.

47. The parties have acquired during their marriage and prior to their May 23, 1998 separation, certain household furniture, furnishings and belongings as well as certain personal belongings and effects. The parties have agreed to a division of this personal property with the exception of the living room furniture which includes a black couch and two chairs.

48. The parties have acquired certain personal property following their separation. The parties have agreed to a division of this personal property.

49. The parties have acquired the following financial obligations and liabilities during their marriage and to the time of their separation:

(a) Mr. Don Farr - secured lender for Roy, Utah family home - loan administered through Escrow Specialists - \$840.00 scheduled monthly payment - the parties are named obligors - \$1,800.00 instalment payment arrearage accrued at time of trial.

(b) G.E.C.C. - \$1,324.00 account balance.

(c) Paul D. Hopkin, DDS - \$120.00 account balance.

(d) Credit Bureau of Ogden - \$515.00 collection account balance.

(e) McKay Dee Hospital - \$472.00 account balance - incurred during July 1998.

(f) U.S. West - telephone services provider for Roy, Utah home - \$598.00 balance.

(g) Arizona State Tax Commission - \$13,500.00 +/- accrued and unpaid income tax liability -

the parties are named account obligors.

(h) Anderson Lumber Company - \$240.00 account balance - the petitioner is named account obligor.

(i) Kwall Howell's - \$1,500.00 account balance - the petitioner is the named account obligor.

(j) Utah Power - electricity provider for Roy, Utah family home - \$87.00 account balance.

(k) Questar - natural gas provider for Roy, Utah family home - \$42.00 account balance.

(l) Internal Revenue Service - \$145,000.00 +/- income tax liability.

(m) Utah Office of Recovery Services - child support arrearage judgment - incurred by Mr. Dunn for his now emancipated daughter from his first marriage.

50. Each of the parties have incurred attorney fees and costs in this action.

### CONCLUSIONS OF LAW

1. The jurisdiction and venue of this action are each vested properly with this court.

2. Each party should be awarded a Decree of Divorce from the other upon the grounds of irreconcilable differences with each awarded Decree of Divorce to become final upon entry.

3. Mrs. Dunn should be awarded the sole legal custody of the parties' children Shae, Mackenzie and Kieffer.

4. The parties should be bound by the visitation and access schedule and advisory guidelines within UCA §30-3-32 et seq (1993, as amended). A copy of this court's summarized visitation



schedule and a copy of the cited visitation and access statute is attached to the Decree of Divorce as Exhibit "A".

5. Because Shae and MacKenzie are attending a California elementary school which administers all year track scheduling, the parties should divide equally between them each of the children's school scheduled vacations.

6. The parties should share equally the costs incurred for transporting their children between California and Utah during the California school scheduled vacations when the petitioner exercises visitation.

7. If the parties cannot resolve an appropriate visitation and access schedule for Mr. Dunn, either party may return these visitation and access issues to the court for additional hearing before one of the court's Domestic Relations Commissioners. The court's intent is to allow the parties to set out a visitation and access schedule for Mr. Dunn which is the product of mutual agreement. The parties should be allowed leeway to continue their efforts to set appropriate visitation and access scheduling before the court mandates a visitation and access schedule for Mr. Dunn.

8. Mr. Dunn should pay to Mrs. Dunn a Base Child Support Award of \$383.88 each month beginning February 2000. Unless the parties otherwise agree in writing, Mr. Dunn's Base Child Support Obligation should be paid in equal instalments with each instalment due not later than the 5<sup>th</sup> and 20<sup>th</sup> day of each month. A copy of a Sole Custody Child Support Worksheet is attached to the Decree of Divorce as Exhibit "B".

9. When any of the parties' three children obtains eighteen years of age or graduates from high school during her/his normal and expected year of graduation, whichever event last occurs, Mr. Dunn's ongoing Base Child Support Obligation will be terminated automatically for that child absent

Mrs. Dunn establishing a special dependency needs for that child as provided by statute.

10. The Base Child Support Award to be paid by Mr. Dunn should be reduced by 50% for each child for time periods during which each child is with Mr. Dunn by court order or by written agreement of the parties for at least 25 of any 30 consecutive days. If any one of the parties' three children is a recipient of AFDC benefits, any agreement by the parties for the reduction of child support during extended custodial access must be provided to the administrative agency. Normal weekend and holiday visits/access by Mrs. Dunn will not be considered an interruption of the consecutive day requirement.

11. Mrs. Dunn will continue to maintain existing family level accident and health insurance coverage for Shae, MacIenzie and Kieffer. Mrs. Dunn must provide this coverage for so long as such coverage is employer provided or is otherwise available to her at reasonable cost.

12. Each party must share the out-of-pocket costs of the health and dental insurance premiums actually by Mrs. Dunn for the children's portion of the accident and health insurance premium. The children's portion of this premium is calculated by the parties dividing the premium amount actually paid by Mrs. Dunn by the number of persons covered under the policy and multiplying the result by the number of children in this case. Each party's share is one-half of the amount last obtained. Mr. Dunn's share of the children's portion of the accident and health insurance premium actually paid by Mrs. Dunn should be added to Mr. Dunn's ongoing Base Child Support Obligation.

13. Pursuant to UCA §62A-11-502, the Base Child Support Obligation to be paid by Mr. Dunn is subject to state administered wage withholding procedures.

14. Pursuant to UCA §78-45-7.16, the parties must share equally the reasonable work

related/education related child care expenses actually incurred by them. When an actual expense for child care is incurred by one of the parties, the other party will begin paying his/her share on a monthly basis immediately upon presentation of proof of the child care expense. If child care ceases to be incurred, that parent may suspend making monthly payments while the child care expense is not being incurred and may do so without obtaining a modification of the child support order.

15. A parent who incurs a child care expense must provide to the other parent written verification of the cost and identity of the child care provider. Each parent must notify the other of any change of child care providers or the scheduled monthly expense for child care services within thirty (30) calendar days from the date of any such change.

16. Each party will provide all third party child care providers with the name, current address and telephone number of the other parent. Mrs. Dunn must provide Mr. Dunn with the name, current address and telephone number of each child care provider used by her. The same disclosure obligation applies equally to Mr. Dunn.

17. The parties should share equally all reasonable and necessary uninsured medical expenses, including deductibles and co-payments, incurred for any one of their three children. Mrs. Dunn must provide verification of coverage to Mr. Dunn. Mrs. Dunn must likewise notify Mr. Dunn of any change of insurance carrier, premium or benefits within thirty (30) days of the date she first learned or should have learned of the change.

18. When either parent incurs medical expenses for any one of their children, that parent will provide the other with written verification of the cost and payment of medical expenses to the other parent within thirty (30) days of payment. A party incurring the medical expense for any one of their children may be denied the right to receive credit for the expense or to recover the other's share

of the expense if that parent fails to comply with controlling terms and provisions set forth within this numbered paragraph and paragraph 17 of these Conclusions of Law.

19. UCA §78-45-7.2(a) provides that parents are to be notified of the opportunity to modify child support orders under any of the following circumstances:

(a) when a child support order has not been modified within the previous three years and if the court, taking into account the best interests of the children, determines that the new child support award would be a difference of 10% or more from the prior amount ordered, or

(b) a change of circumstances has occurred since the entry of the last child support award.

A substantial change in circumstances may include:

- i. material changes in custody;
- ii. material changes in relative wealth or assets of the parties;
- iii. material changes of 30% or more in the income of the parents;
- iv. material changes in the ability of the parents to earn;
- v. material changes in the medical needs of any one of the children, and
- vi. material changes in the legal responsibilities of either parent for the support of others.

For any of the substantial change of circumstances identified within paragraph (b) above, the change should result in a difference of 15% or more between the amount of child support previously ordered and the amount that would be required under the guidelines.

20. Beginning with year 2000, Mrs. Dunn should receive the federal income tax dependency deduction for Kieffer and for MacKenzie and Mr. Dunn should receive the federal income tax dependency deduction for Shae.

21. Mr. Dunn should be awarded the sole possession and ownership of the Roy, Utah family home, together with any equity that this real property may possess, free and clear from all claims of Mrs. Dunn. Mrs. Dunn shall convey to Mr. Dunn her ownership interest in the Roy, Utah family home by an appropriate quit claim deed.

22. Each party should be awarded the personal property, to include household furniture and furnishings as well as personal effects and belongings which each party now possesses, subject to the following items of personal property which are awarded to Mrs. Dunn:

- (a) the living room black couch and two chairs,
- (b) the dinning room set,
- (c) the large screen television,
- (d) all crystal glassware, platters, etc.,
- (e) the master bedroom dresser set,
- (f) Mrs. Dunn's mountain bike, and
- (g) Mrs. Dunn's personal effects and belongings which remain in the Roy, Utah family home.

23. Each party should be awarded the personal property, to include motor vehicles, which that party individually acquired after the parties' May 23, 1998 separation.

24. Mr. Dunn should be responsible for the following financial obligations and liabilities and shall hold Mrs. Dunn safe and harmless therefrom:

- (a) the secured lender obligation against the Roy, Utah family home,
- (b) the Anderson Lumber account,
- (c) the Kwall Howells account,
- (d) the Utah Power account,

(e) the Questar account,

(f) the Internal Revenue Service income tax liability,

(g) the G.E.C.C. obligation, and

(h) the child support arrearage account now being paid by Mr. Dunn through the Utah Office of Recovery Services.

25. Mrs. Dunn should be responsible for the following financial obligations and liabilities and should hold Mr. Dunn safe and harmless therefrom:

- (a) the Arizona State Tax Commission income tax liability,
- (b) the McKay Dee Hospital account,
- (c) the Credit Bureau of Ogden collection account,
- (d) the account balance owed to Paul D. Hopkins, DDS, and
- (e) the Bonneville Collections account.

26. Unless otherwise specifically designated within these Conclusions of Law, each party should assume and satisfy those financial obligations and liabilities individually incurred by him or her following their May 23, 1998 separation.

27. Pursuant to UCA §15-4-6.7 and UCA §30-3-5(1)(c), each party shall provide a copy of the Decree of Divorce entered in this action to each provider/creditor who has or will provide health care services to any one of their children. A health care provider who has provided services to any one of the parties' three children may not make a claim for unpaid medical expenses against the parent who has paid in full his or her share of the medical or dental expenses required to be paid by that parent under the Decree of Divorce. To implement the statutory provisions cited within this numbered paragraph, each party must:

(a) send a copy of the Decree of Divorce to the health care provider for the particular medical service,

(b) notify the health care provider of that party's current address,

(c) inform the billing/unpaid provider that it may not make a claim for unpaid medical expenses against that party if that party has paid in full the share of that party's medical and dental expenses required to be paid by that parent under the Decree of Divorce, and

(d) inform the billing/unpaid provider that it may not make a negative credit report under UCA §70-7-107 et seq or make a report of the debtor's repayment practices or credit history under Title VII, Chapter 14, Credit Information Exchange regarding a parent who has paid in full that share of the medical and dental expense required to be paid by that parent under the Decree of Divorce.

28. The parties are required to provide a copy of the Decree of Divorce entered in this action to each creditor for each outstanding obligation identified within the Decree of Divorce which names the petitioner and respondent as joint obligors/debtors. The parties must cooperate fully with each other and are required to notify in writing each joint creditor/obligee of the court ordered responsibility between the parties for each joint obligation/debt. The required notice to each joint creditor must include:

(a) the current mailing address for the petitioner and for the respondent,

(b) information to the joint creditor that the petitioner and the respondent are each entitled to receive statements, notices and correspondence required by law or by terms of the contract, and

(c) information to the joint creditor that the creditor may not make a negative credit report under UCA §70C-7-107 and may not make a report of repayment practices or credit history under Title VII, Chapter 14, Credit Information Exchange regarding the joint obligation because of non-

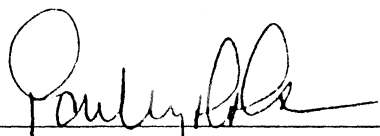
payment by the party required to pay the debt unless the joint creditor has first made a demand for payment on the party who was not required to pay the debt.

29. Neither party should be awarded alimony against the other, both now and in the future.

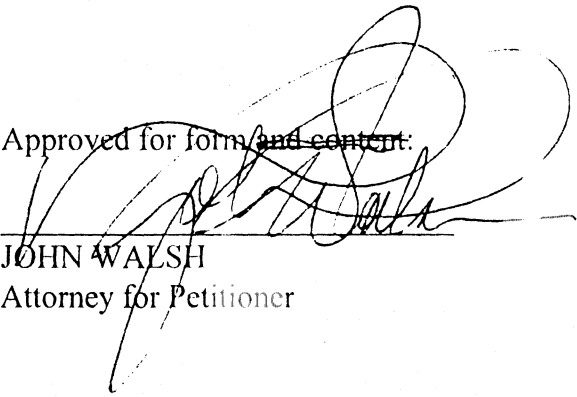
30. Each party should be awarded a percentage interest in any retirement program maintained by the other party consistent with those standards identified in the **Woodward v. Woodward** Utah Supreme Court decision.

31. Each party should pay attorney fees and costs which he or she has individually incurred in this action.

DATED this 25 day of February, 2000.

  
\_\_\_\_\_  
THE HONORABLE PARLEY R. BALDWIN  
District Court Judge

Approved for form and content:

  
\_\_\_\_\_  
JOHN WALSH  
Attorney for Petitioner



Tab 4

# TOLDP:2

Test of Language Development-  
Primary  
Second Edition

## PROFILE/EXAMINER RECORD FORM

### Identifying Information

Name Shea Dunn Female ☒ Male ☐

Years Months Days  
Date of Testing 1997 10<sup>9</sup> 22  
Date of Birth 1991 1 25  
Age 6 8 7

School Valley View Grade 1

Examiner's Name Gheri Folker

Examiner's Title Speech Pathologist

### Section I: Record of Scores

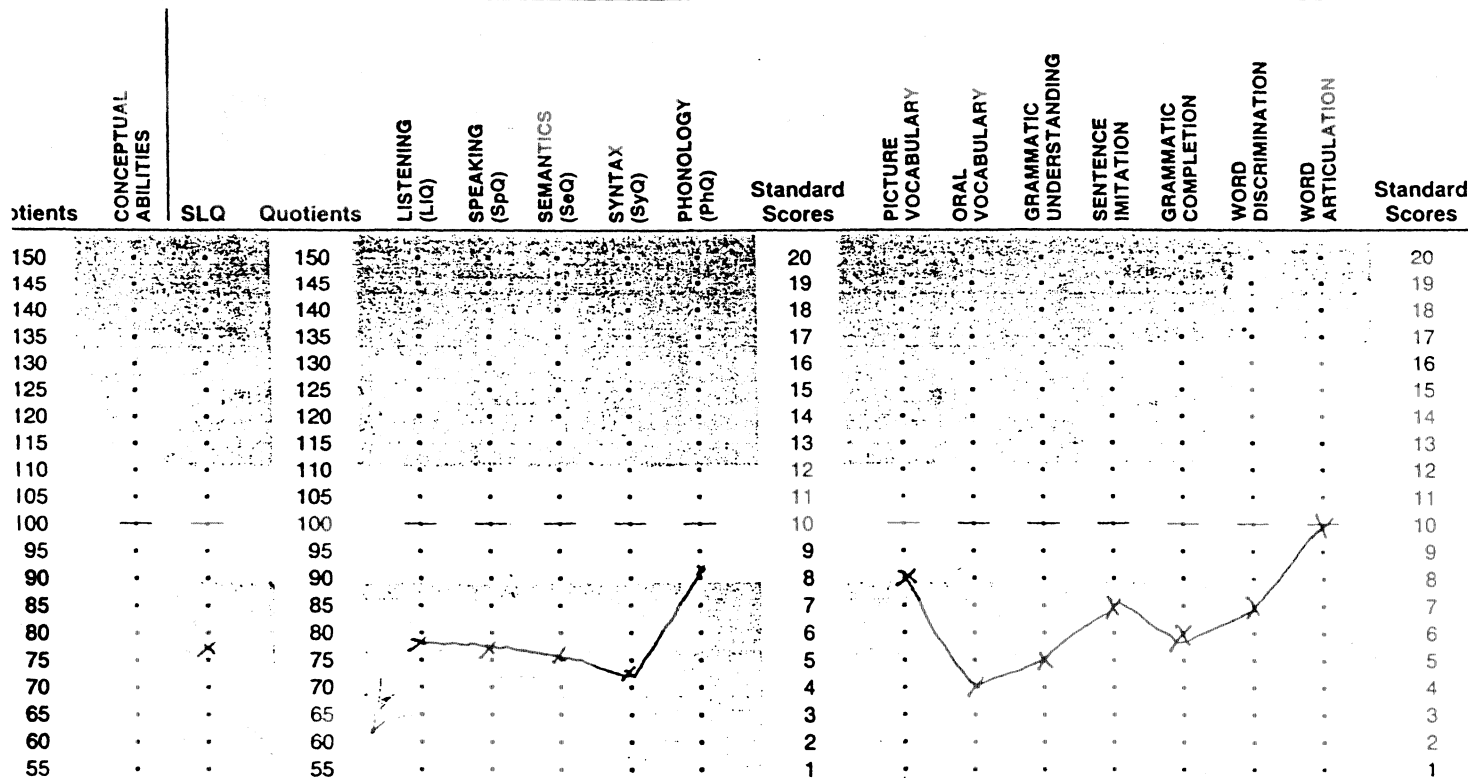
#### SUBTESTS

	Raw Scores	Percentiles	Standard Scores
Picture Vocabulary	<u>15</u>	<u>25</u>	<u>8</u>
Oral Vocabulary	<u>0</u>	<u>2</u>	<u>4</u>
Gram. Understanding	<u>14</u>	<u>5</u>	<u>5</u>
Sentence Imitation	<u>8</u>	<u>16</u>	<u>7</u>
Gram. Completion	<u>8</u>	<u>9</u>	<u>6</u>
Word Discrimination	<u>12</u>	<u>16</u>	<u>7</u>
Word Articulation	<u>18</u>	<u>50</u>	<u>10</u>

#### COMPOSITES

	PV	OV	GU	SI	GC	WD	WA	Sums of Std. Scores	Quotients
Spoken Language (SLQ)	<u>8</u>	<u>4</u>	<u>5</u>	<u>7</u>	<u>6</u>	<u>7</u>	<u>10</u>	= <u>47</u>	( <u>77</u> )
Listening (LiQ)	<u>8</u>		<u>5</u>			<u>7</u>		= <u>20</u>	( <u>79</u> )
Speaking (SpQ)		<u>4</u>		<u>7</u>	<u>6</u>		<u>10</u>	= <u>27</u>	( <u>78</u> )
Semantics (SeQ)	<u>8</u>	<u>4</u>						= <u>12</u>	( <u>76</u> )
Syntax (SyQ)			<u>5</u>	<u>7</u>	<u>6</u>			= <u>18</u>	( <u>74</u> )
Phonology (PhQ)						<u>7</u>	<u>10</u>	= <u>17</u>	( <u>91</u> )

### Section II: Profile of Scores





# Peabody Picture Vocabulary Test—Revised

## INDIVIDUAL TEST RECORD

by LLOYD M. DUNN & LEOTA M. DUNN

### FORM L

NAME Dunn Shea SEX: M F  
(last) (first) (middle initial) (circle)

HOME ADDRESS \_\_\_\_\_ HOME PHONE \_\_\_\_\_

SCHOOL Valley View GRADE PLACEMENT 1  
(or agency) (or education)

TEACHER Coffen EXAMINER Sheri Folker  
(or counselor)

LANGUAGE OF THE HOME: ☒ Standard English; ☐ Other \_\_\_\_\_  
(specify: foreign language, or type of English dialect spoken)

### Date & Age Data

	Year	Month	Day
Date of testing.....	1997	10 <sup>th</sup>	46
Date of birth.....	1991	1	25
Chronological age.....	6	8	21*

\*If the number of days exceeds 15, add a month to the age (see Part I of the Manual).

### Notice to Users

The PPVT-R is not intended for use in situations where truth-in-testing legislation stipulates that copies of test items and correct responses be distributed to subjects, parents, or the general public. Such disclosures may make the norms meaningless in future testing.

### Reason for Testing (may include referral source and person authorizing testing)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

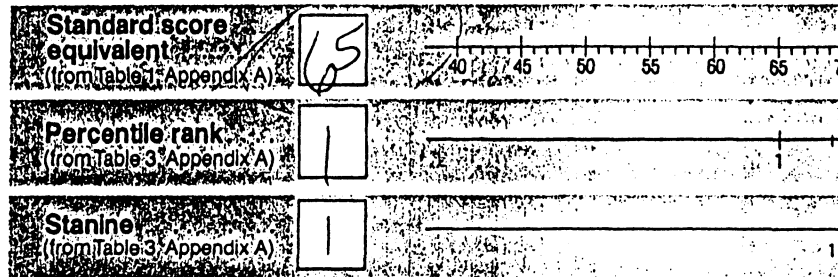
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## Obtained Test Scores

Mark the obtained standard score equivalent on scale. Then draw a heavy, straight, vertical line through the three obtained deviation-type tests. Depending upon the obtained standard score, a band on both sides of the vertical line, according to the right. An example is given in F of the Manual.

Raw score..... 47  
 (from page 4)



Age equivalent..... 4-3  
 (from Table 4, Appendix A)

EXTREMELY LOW SCORE

### Data from Other Tests

Test	Date	Results
PPVT-R FORM M		

### Observations

Briefly describe the subject's test behavior, such as interest in task, quickness of response, perseveration, work habits, etc.:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

98 9  
 91 125  
 78

Shea Dunn

Student's Name Sex

Parent's Name

Home Address Home Phone

Grade Teacher

School Examiner

# Comprehensive Form



KAUFMAN TEST of EDUCATIONAL ACHIEVEMENT

by Alan S. Kaufman

Nadeen L. Kaufman

Test Date Year 97 Month 10 Day 3  
Birth Date 9/1/25  
Chronological Age 6

INDIVIDUAL

TEST

RECORD

COMPREHENSIVE FORM SUBTESTS Mean = 100; SD = 15	RAW SCORES			Standard Score* Table 5	Band of Error % Confidence Table 5 or 6	%ile Rank Table 7	Other Data
	Reading Composite	Mathematics Composite	Battery Composite				
Mathematics Applications		2	2	77	=		
Reading Decoding	5		5	86	=		
Spelling		11	0	84	=		
Reading Comprehension	0		0	88	=		
Mathematics Computation		4	4	95	=		

Sum of Subtest Raw Scores

5 6 11

Transfer sums to Composite Scales, Sum of Subtest Raw Scores column

\*Standard Scores Derived from (Circle the table used):

Fall Norms (August-January)  
Spring Norms (February-July)

AGE GRADE

Table 1

Table 2

Table 3

Table 4

COMPREHENSIVE FORM COMPOSITE SCALES Mean = 100; SD = 15	Sum of Subtest Raw Scores	Standard Score* Table 5	Band of Error % Confidence Table 5 or 6	%ile Rank Table 7	Descriptive Category	Other Data
Reading Composite	5	86	=			
Mathematics Composite	6	84	=			
	11	84	=			

Indicate >, <, or =

Standard Score Difference

Circle the Significance Level

GLOBAL SKILL COMPARISONS	Reading Composite	Mathematics Composite
	Reading Composite	Spelling Subtest
	Mathematics Composite	Spelling Subtest
SPECIFIC SKILL COMPARISONS	Reading Decoding	Reading Comprehension
	Mathematics Applications	Mathematics Computation

NS .05 .01

NS .05 .01

NS .05 .01

NS .05 .01

NS .05 .01

AG

K - A B C

KAUFMAN ASSESSMENT BATTERY  
FOR CHILDREN

A S S I S T

ANALYSIS RESULTS

COPYRIGHT 1984, 1985 AGS

AMERICAN GUIDANCE SERVICE  
CIRCLE PINES MN 55014-1796

VERSION 1.2

NAME SHEA DUNN                      SEX FEMALE

PARENTS' NAMES  
VALENE & CORY DUNN

HOME ADDRESS 2808 W. 4225 S. ROY,UT.

GRADE 1ST      SCHOOL VALLEYVIEW ELE.

EXAMINER LEE GARNER SP/ED COORDINATOR

	YEAR	MONTH	DAY
TEST DATE	97	11	6
BIRTH DATE	91	1	25
CHRONOLOGICAL AGE	6	9	11

# ANALYSIS DECISIONS

	YES	NO
SOCIOCULTURAL PERCENTILES		X
NONVERBAL SCALE	X	
OUT-OF-LEVEL NORMS		X
AGE EQUIVALENTS	X	
GRADE EQUIVALENTS		X
CONFIDENCE LEVEL (90%)		

IE NOTES:

BAL SCALE COMPARISONS

NONVERBAL SCALE ADMINISTERED

FOR MOST ASSESSMENT PURPOSES, 95 PERCENT CONFIDENCE (P<.05) IS AMPLE, ALTHOUGH  
SOME CLINICIANS MAY WISH TO USE THE MORE CONSERVATIVE 99 PERCENT LEVEL (P<.01)  
FOR IMPORTANT DECISIONS RELY ON THE DISCREPANCY.

NONVERBAL SCALE DERIVED SCORES

	SUM OF SUBTEST SCORES	STANDARD ERROR SCORE	CONFID. INTERVAL 90%	NATIONAL %ILE RANK	NATIONAL INTERVAL 90%
VERBAL PROCESSING					
FLUENT PROCESSING					
VERBAL PROCESSING COMPOSITE					
REASONING					
NONVERBAL	35	80	7 73- 87	9	4 - 19

	SOCIOCULTURAL %ILE RANK	SOCIOCULTURAL %ILE INTERVAL 90%	AGE EQUIVALENT	DESCRIPTIVE CATEGORY
VERBAL PROCESSING				
FLUENT PROCESSING				
VERBAL PROCESSING COMPOSITE				
REASONING				
NONVERBAL			5- 3	WELL BELOW AVERAGE/ BELOW AVERAGE

# CAL PROCESSING SCALE TEST DERIVED SCORES

	RAW SCORE	SCALED SCORE ----- NONVERBAL	STRENGTH/ WEAKNESS (.05)	NATIONAL %ILE RANK	AGE EQUIVALENT
ID MOVEMENTS	10	10	S	50	6- 9
ANGLES	3	5		5	4- 6
RIX ANALOGIES	8	9		37	6- 6
TIAL MEMORY	6	6		9	5- 3
TO SERIES	1	5		5	< 5- 0

THIS CHILD'S NONVERBAL SCALE MEAN IS 7.



IBLE STRENGTHS

POSSIBLE WEAKNESSES

EVIDENT

NONE EVIDENT

THE INFORMATION ABOUT SHARED ABILITIES PROVIDES HYPOTHESES ABOUT A CHILD'S PERFORMANCE ON THE K-ABC. A HYPOTHESIS SHOULD NOT BE ACCEPTED UNTIL IT IS SUPPORTED BY OTHER DATA AND OBSERVATIONS.

## Q U E A B I L I T I E S

IBLE STRENGTHS

POSSIBLE WEAKNESSES

MOVEMENTS

MOTORIC REPRODUCTION OF  
A SEQUENCE

NONE EVIDENT

THE INFORMATION ABOUT UNIQUE ABILITIES PROVIDES HYPOTHESES ABOUT A CHILD'S PERFORMANCE ON THE K-ABC. A HYPOTHESIS SHOULD NOT BE ACCEPTED UNTIL IT IS SUPPORTED BY OTHER DATA AND OBSERVATIONS. ALSO NOTE THAT HYPOTHESES BASED ON INDIVIDUAL SUBTESTS ARE LESS ROBUST THAN THOSE BASED UPON GLOBAL SCALES AND SHARED ABILITIES.

Student Shea Dunn Date 11/13/97  
School Valley View Grade 1

Achievement Tests	Date	Ability Tests	Date
<input type="checkbox"/> Woodcock Johnson Part I		<input type="checkbox"/> Woodcock Johnson Part I	
<input type="checkbox"/> PIAT		<input checked="" type="checkbox"/> Weschler Scales	<u>11/13/97</u>
<input type="checkbox"/> Woodcock Reading Mastery		<input type="checkbox"/> K-ABC	
<input type="checkbox"/> Key Math		<input type="checkbox"/> Matrix Analogy Test	
<input type="checkbox"/> WIAT		<input checked="" type="checkbox"/> Other <u>Kaufman Assessment Battery for Children</u>	<u>11/6/97</u>
<input checked="" type="checkbox"/> Other <u>Kaufman</u>	<u>10/3/97</u>	<input type="checkbox"/> Other	

(Check area(s) in which this student shows a severe discrepancy:

Attach behavioral observation form and Estimator disk printout(s).

☒ Oral Expression ☐ Written Expression ☐ Listening Comprehension  
☐ Basic Reading Skills ☐ Reading Comprehension ☐ Math Calculations ☐ Math Reasoning

### Disclaimers

Following are general disclaimers described in the USOE Special Education Rules. Please indicate if the discrepancy is primarily the result of one of the following disclaimers to the condition being considered.

	Yes	No	
Vision Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Date of last screening <u>10/97</u>
Hearing Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Date of last screening
Motor Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Basis of decision <u>no evidence</u>
Intellectual Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Basis of decision <u>testing</u>
Behavior Disordered	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Basis of decision <u>no evidence</u>
Cultural, Economic, or Environmental Disadvantage	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Basis of decision <u>no evidence</u>

Is the student primarily identified as manifesting any other disabling conditions described in the USOE Special Education Rules? ☐ Yes ☒ No

Is there a severe deficiency between ability and academic achievement? ☐ Yes ☐ No see disclaimer

Does the severity of this deficiency warrant special education placement? ☒ Yes ☐ No

Can this student's educational needs be addressed without special education services? ☐ Yes ☒ No

Are there educationally relevant medical findings? Attach supporting data. ☐ Yes ☒ No

☒ Yes The multidisciplinary team finds the above named student eligible to receive special education services as per Utah State Office of Education definition of disability category, criteria and appropriate evaluation procedures.

☐ No The multidisciplinary team has reviewed the evaluation results and finds that your child does not meet criteria to receive special education services under IDEA.

Team Signatures	Title	Date
<u>Deborah Coffin</u>	Regular Teacher	<u>12/8/97</u>
<u>Christina</u>	Special Ed. Teacher	<u>12/8/97</u>
<u>Maurice Newton</u>	Principal	<u>12/2/97</u>

# Special Education Observation Form

Student: Shea Dunn

Teacher: \_\_\_\_\_

School: Valley View

Date: 11/15/97

## Oral Expression

1. Responds appropriately to questions
2. Volunteers to answer questions
3. Speaks in complete sentences
4. Effective oral communication

## Listening Comprehension

1. Follows directions
2. Remembers spoken information
3. Understands subtleties in language or word meaning

## Written Expression

1. Acceptable handwriting (if child reverses letters, indicate here)
2. Acceptable spelling in daily work
3. Punctuates and capitalizes at grade expectancy
4. Writes complete sentences
5. Communicates effectively through written expression
6. Grammar, syntax, and usage at grade expectancy

## Basic Reading Skills

1. Remembers letter sounds
2. Discriminates between sounds
3. Applies word attack skills
4. Applies structural analysis skills (prefixes, suffixes, syllables, etc.)
5. Reads sight vocabulary at grade level

	Yes	At Times	No	Not Applicable
1.		✓		
2.		✓		
3.	✓			
4.	✓			
1.		✓		
2.		✓		
3.		✓		
1.	✓			
2.				✓
3.	✓			
4.				✓
5.				✓
6.				✓
1.	✓			
2.	✓			
3.	✓			
4.				✓
5.	✓			

## Reading Comprehension

1. Adequate literal comprehension
2. Adequate inferential comprehension

## Mathematical Calculation

1. Computes math problems correctly using basic operations
2. Remembers math facts

## Mathematical Reasoning

1. Solves story problems to grade expectancy
2. Applies math skills to real life situations

## Related Behaviors

1. Pays attention to individual or group discussions
2. Concentrates well
3. Normal level of activity
4. Relates in a friendly manner (is neither hostile nor aggressive)
5. Raises hand; waits turn to speak
6. Works independently
7. Does not bother other children
8. Seems well coordinated
9. Adapts to new social situations
10. Follows classroom routines

## Other Comments or Concerns

	Yes	At Times	No	Not Applicable
1.		✓		
2.		✓		
1.	✓			
2.	✓			
1.				✓
2.				✓
1.		✓		
2.		✓		
3.	✓			
4.	✓			
5.	✓			
6.	✓			
7.	✓			
8.		✓		
9.		✓		
10.	✓			

11-8-97

The IEP team met to discuss Shira's placement in resource. The team decided on a Learning Disability classification even though her discrepancy is less than 50%.

Supporting data

Wechsler Intelligence Scale

Verbal 72 Performance 72

full scale 70 -- The spread between scale scores ranges from 9 to 2 which is not the profile of an Intellectually disabled child.

Kaufman ABC Sequential

Simultaneous 75 Composite 82

These scores are very typical of a normal student

Test of Lang Development all but 3 areas are below her age level.

The team concluded that the K-ABC and the TOLD prove a learning disability.

Name Sheep Sex F  
 School Valley View Grade 1  
 Examiner Janet Meyer Handedness R

# WISC-III

## Wechsler Intelligence Scale for Children®-Third Edition

Subtests	Raw Scores	Scaled Scores				
Picture Completion	3	3	3	3	3	
Information	6	7	7	7	7	
Coding	35	9	9	9	9	9
Similarities	5	6	6	6	6	
Picture Arrangement	3	5	5	5	5	
Arithmetic	4	2	2	2	2	
Block Design	5	6	6	6	6	
Vocabulary	9	6	6	6	6	
Object Assembly	5	4	4	4	4	
Comprehension	4	4	4	4	4	
(Symbol Search)		( )	( )	( )	( )	
(Digit Span)		( )	( )	( )	( )	
(Mazes)		( )	( )	( )	( )	
Sum of Scaled Scores	252	23	18			
	Verbal	Perfor.	VC	PO	FD	PS

Full Scale  
Score  
52

OPTIONAL

	Year	Month	Day
Date Tested	1997	11	3
Date of Birth	1991	1	25
Age	6	9	8

	Score	IQ/ Index	%ile	75% Confidence Interval
Verbal	25	72	3	67-80
Performance	27	72	3	66-83
Full Scale	52	70	2	66-77
VC Verbal Comp	23	71	6	72-85
PO Pictorial Organ	18	69	2	64-80
FD				-
PS				-

Subtest Scores													
Verbal							Performance						
Inf	Sim	Ar	Voc	Com	DS		PC	Cd	PA	BD	OA	SS	Mz
7	6	2	6	4			3	9	5	6	4		
19	.	.	.	.	.	.	.	.	.	.	.	.	.
18	.	.	.	.	.	.	.	.	.	.	.	.	.
17	.	.	.	.	.	.	.	.	.	.	.	.	.
16	.	.	.	.	.	.	.	.	.	.	.	.	.
15	.	.	.	.	.	.	.	.	.	.	.	.	.
14	.	.	.	.	.	.	.	.	.	.	.	.	.
13	.	.	.	.	.	.	.	.	.	.	.	.	.
12	.	.	.	.	.	.	.	.	.	.	.	.	.
11	.	.	.	.	.	.	.	.	.	.	.	.	.
10	.	.	.	.	.	.	.	.	.	.	.	.	.
9	.	.	.	.	.	.	.	.	.	.	.	.	.
8	.	.	.	.	.	.	.	.	.	.	.	.	.
7	.	.	.	.	.	.	.	.	.	.	.	.	.
6	.	.	.	.	.	.	.	.	.	.	.	.	.
5	.	.	.	.	.	.	.	.	.	.	.	.	.
4	.	.	.	.	.	.	.	.	.	.	.	.	.
3	.	.	.	.	.	.	.	.	.	.	.	.	.
2	.	.	.	.	.	.	.	.	.	.	.	.	.

IQ Scores			Index Scores (Optional)			
VIQ	PIQ	FSIQ	VCI	POI	FDI	PSI
160						
150						
140						
130						
120						
110						
100						
90						
80						
70						
60						
50						

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THE PSYCHOLOGICAL CORPORATION®  
 HARCOURT BRACE JOVANOVIH, INC.



# Kaufman Assessment Battery for Children

by Alan S. Kaufman and Nadeen L. Kaufman

## INDIVIDUAL TEST RECORD

Name Shea Dunn Sex Female

Parents' names Valene & Cory Dunn

Home address 2808 W. 4225 So. Roy

Home phone 731-3139

Grade 1<sup>st</sup> School Valleyview Ele.

Examiner Lee Harker

SOCIOCULTURAL INFORMATION (if pertinent)

Race \_\_\_\_\_

Socioeconomic background \_\_\_\_\_

Test date YEAR 97 MONTH 11 DAY 36  
Birth date YEAR 91 MONTH 1 DAY 25  
Chronological age YEAR 6 MONTH 9 DAY 11

Mental Processing Subtests $\bar{X} = 10; SD = 3$	Scaled Score			Nat'l. %ile rank Table 4	S or W Table 11	Age Equiv. Other data
	Sequen- tial	Simul- taneous	Non- verbal			
1. Magic Window						
2. Face Recognition						
3. Hand Movements	10	10	10			6-9
4. Gestalt Closure	9	6				4-9
5. Number Recall	10	11				8-3
6. Triangles	3	5	5			4-6
7. Word Order	9	9				6-0
8. Matrix Analogies	8	9	9			6-0
9. Spatial Memory	6	6	6			5-3
10. Photo Series	1	5	5			5-10

Sum of subtest scores

Three empty circles for summing subtest scores.

Transfer sums to Global Scales.  
Sum of subtest scores column.

Achievement Subtests $\bar{X} = 100; SD = 15$	Standard score $\pm$ band of error _____ % confidence	Nat'l. %ile rank Table 4	Socio-cultural %ile rank Table 5	S or W Table 11	Age Equiv. Other data
11. Expressive Vocabulary	$\pm$				
12. Faces & Places	5 78 $\pm$ 11	23			4-0
13. Arithmetic	16 84 $\pm$ 10	34		<1.0	5-9
14. Riddles	7 78 $\pm$ 10	21			4-6
15. Reading/Decoding	9 77 $\pm$ 4	10		<1.0	5-9
16. Reading/Understanding	$\pm$				

Sum of subtest scores

Empty circle for summing achievement subtest scores.

Transfer sum to Global Scales.  
Sum of subtest scores column.

Global Scales $\bar{X} = 100; SD = 15$	Standard score $\pm$ band of error _____ % confidence	Nat'l. %ile rank Table 4	Socio-cultural %ile rank Table 5	Age Equiv. Other data
Sequential Processing	30 100 $\pm$ 7	50		7-0
Simultaneous Processing	31 75 $\pm$ 7	5		5-0
Mental Processing Composite	61 82 $\pm$ 6	12		5-9
Achievement	317 77 $\pm$ 5	6		5-0
Nonverbal	35 80 $\pm$ 7	9		5-3

### Global Scale Comparisons

Indicate >, <, or =		Circle the significance level		
Sequential	Simultaneous (Table 10)	NS	.05	.01
Sequential	Achievement (Table 10)	NS	.05	.01
Simultaneous	Achievement (Table 10)	NS	.05	.01
M P C	Achievement (Table 10)	NS	.05	.01

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# Expressive One-Word Picture Vocabulary Test-R

Morrison F. Gardner  
Children's Hospital of San Francisco

## Individual Record Form

Name: Shea Dunn Sex: F Grade: 2

School: Valley View Elem. Examiner: S. Griffin

Date of Test: 1998 12 14  
year month day

Date of Birth: 1991 1 25  
year month day

Chronological Age: 7 11 19  
year month day\*

\* If the number of days exceeds 15, consider as a full month and increase the months by one.

### Test Results:

Raw Score	<u>61</u>
Age Equivalent	<u>7-8</u>
Standard Score	<u>99</u>
Scaled Score	<u>10</u>
Percentile Rank	<u>48</u>
Stanine	<u>5</u>

Comments about child's behavior as it affects the validity of the test results:

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ISBN: 0-87879-903-6

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Student Spina Dunn Birthdate 1-25-91 Date of IEP 12-17-98  
School Valley View Classification Learning Disabled  
Communication Disorder Chged on 2/3/99

Services needed to achieve annual goals and advance in general curriculum

•Special education services

	Location	Amount of Time	Frequency
<u>resources</u>	<input checked="" type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O		<input checked="" type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <u>1hr.</u> <input type="checkbox"/> N/A
<u>speech/language</u>	<input checked="" type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O	<u>2X</u>	<input checked="" type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <u>40 min</u> <input type="checkbox"/> N/A
	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O		<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A
	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O		<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A

•Related services required for student to benefit from special education:

	Location	Amount of Time	Frequency
	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O		<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A
	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O		<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A
	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O		<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A
	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> O		<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A

☐ Check if transportation will be provided.

•Program modifications, supports, or supplementary aids and services in regular education programs

Frequency

	Frequency
<u>reading will be monitored in the</u>	<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A
<u>regular classroom</u>	<input checked="" type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A
	<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A
	<input type="checkbox"/> D <input type="checkbox"/> W <input type="checkbox"/> O <input type="checkbox"/> N/A

R = Regular class, S = Special education class, O = Other, D = Daily, W = Weekly, N/A = Not Applicable

•Projected date of initiation of these services, if other than date of IEP: \_\_\_\_\_

•Anticipated duration of the services: One year from initiation date, or Other: \_\_\_\_\_

Regular Curriculum, Extra-curricular and Non-academic Activities

Except for special education class times noted above, the student will participate in the regular class, regular PE, extra-curricular and non-academic activities to the same extent as non-disabled students, or ☐ other exceptions, (specify and explain) \_\_\_\_\_

State and District Assessment

CORE testing The student: ☒ will participate.  
☐ will participate with modifications. Explain: \_\_\_\_\_  
☐ will not participate because it does not reflect the content of the student's curriculum. Explain how he/she will be assessed: \_\_\_\_\_

SAT testing The student: ☒ will participate.  
☐ will not participate because grade level not assessed or  
☐ will not participate because it does not reflect the content of the student's curriculum. Explain how he/she will be assessed: \_\_\_\_\_

In developing this IEP, the team considered the following (check if appropriate):

- ☐ Behavioral strategies for the student whose behavior impedes his or her learning or that of others.
- ☐ Language needs for the limited English proficient student as they relate to the IEP.
- ☐ Braille instruction for the student who is blind or visually impaired.
- ☐ Communication and language needs for the student who is deaf or hard of hearing.
- ☐ Assistive technology for the student who, without it, would not benefit from special education.
- ☐ Extended School Year (ESY) for the student who requires it to remain in his or her current least restrictive environment and/or whose attainment of expected level of self-sufficiency and independence is unlikely without it.



Student: Shea Dunn

Date of IEP: 12/17/98

**Present Levels of Performance:**

For school age students, describe how the student's disability effects student's involvement and progress in the general curriculum.  
For preschool age students, describe how the disability effects the student's participation in appropriate activities.

Shea is reading on grade level in her regular class. She is working slightly below grade level in math. Shea has difficulty with receptive and expressive vocabulary.

**Measurable Annual Goal:** Shea will improve her expressive language to an age appropriate level with 90% accuracy on monthly probes.

Methods of how the student's progress towards this goal will be measured: ☐ Test scores ☐ Grades ☐ Work sample ☐ Checklist  
☐ Curriculum based assessment ☒ Behavior observations ☒ Other (specify) probes - monthly 10 questions

Parents will be informed of student's progress as often as non-disabled students by: ☐ Parent/Teacher Conference ☐ Report Cards

☒ Progress Report ☐ Other: \_\_\_\_\_

Report of progress on Annual Goal:	Date: <u>2-3-99</u>					
	*Progress Code					

\*Progress Code 1. Sufficient progress to meet goal 2. Insufficient progress to meet goal (Review goal) 3. Not appropriate in this reporting period

**Short Term Objectives/Benchmarks:**

1. Shea will be able to give a synonym, antonym, attribute, or function for 10 words monthly. 90% accuracy on monthly probes.

2. Shea will be able to use each of 10 words from ~~probe~~ monthly probes in a grammatically correct sentence.

Individualized Education Program (IEP)  
(Use multiple sheets as necessary)

Student Shan Luman Date of IEP 12/17/98

Measurable Annual Goal: Shan will improve math skills through completion of Connecticut Math Concepts level B at 80% accuracy or better.

Methods of how the student's progress towards this goal will be measured: ☒ Test scores ☒ Grades ☐ Work sample ☐ Checklist  
☐ Curriculum based assessment ☐ Behavior observations ☐ Other (specify) \_\_\_\_\_

Parents will be informed of student's progress as often as non-disabled students by: ☒ Parent/Teacher Conference ☒ Report Cards  
☐ Progress Report ☐ Other: \_\_\_\_\_

Report of progress on Annual Goal:	Date <u>2/3/99</u>					
	*Progress Code					

\*Progress Code 1. Sufficient progress to meet goal 2. Insufficient progress to meet goal (Review goal) 3. Not appropriate in this reporting period

- Short Term Objectives/Benchmarks:
- 1) Shan will complete lessons & tests 15-45 at 80% accuracy or better.
  - 2) Shan will complete lessons & tests 46-75 at 80% accuracy or better.
  - 3) Shan will complete lessons & tests 76-120 at 80% accuracy or better.

Measurable Annual Goal: Shan will improve language skills through completion of Reasoning & Writing level B at 80% accuracy or better.

Methods of how the student's progress towards this goal will be measured: ☒ Test scores ☒ Grades ☐ Work sample ☐ Checklist  
☐ Curriculum based assessment ☐ Behavior observations ☐ Other (specify) \_\_\_\_\_

Parents will be informed of student's progress as often as non-disabled students by: ☒ Parent/Teacher Conference ☒ Report Cards  
☐ Progress Report ☐ Other: \_\_\_\_\_

Report of progress on Annual Goal:	Date <u>4/3/99</u>					
	*Progress Code					

\*Progress Code 1. Sufficient progress to meet goal 2. Insufficient progress to meet goal (Review goal) 3. Not appropriate in this reporting period

- Short Term Objectives/Benchmarks:
- 1) Shan will complete assignments in level B at 80% accuracy or better.
  - 2) Shan will complete tests in level B at 80% accuracy or better.

**Transition (For students beginning at age 14 and younger, if appropriate)**

- ☐ Transition planning will be addressed through the student's Student Advisement Program or SEOP  
☐ Transition planning is addressed on IEP addendum (see attached)

**Placement Review (not applicable for initial placement)**

- ☒ Maintain current placement or  
☐ Change current placement (Complete Prior Notice for Change of Placement in Special Education.)

**Parent Prior Notice for Free Appropriate Public Education**

The IEP team proposes to implement this program based on the student's needs and represents the free, appropriate public education the student will be provided. You have received and have protection under the Procedural Safeguards which were sent to you upon the student's referral for evaluation. You may receive another copy of the Procedural Safeguards from the special education teacher. If you have any questions regarding this notice or the Procedural Safeguards, contact the special education teacher at the student's school.

If you have a complaint regarding this process, a copy of the Utah State Office of Education complaint procedures and timeline are available from the Utah State Office of Education Coordinator of Special Education (801-538-7706).

**IEP Team Participants\***

<u>Cay N. Brown</u>	Parent
<u>Maurine Newton</u>	LEA
	Student
	Regular Ed Teacher
<u>Janet Meyer</u>	Special Ed Teacher
<u>Sara Hoffman</u>	Other SLP
<u>Margie H. Helt</u>	Other Scottish Rite
<u>Nichelle Dechow</u>	Other Scottish Rite
	Other

**IEP Review Team Participants\***

<u>Cay N. Brown</u>	Parent
<u>Maurine Newton</u>	LEA
	Student
<u>Danielle Franks</u>	Regular Ed Teacher
<u>Janet Meyer</u>	Special Ed Teacher
<u>Sara Hoffman</u>	Other SLP
	Other
	Other
	Other

Note: If parent signature is missing, check below:

- ☐ Did not attend (document efforts to involve parent)  
☐ Via telephone  
☐ Other: \_\_\_\_\_

\*Note: If parent signature is missing, check below:

- ☐ Did not attend (document efforts to involve parent)  
☐ Via telephone  
☐ Other: \_\_\_\_\_

Math and Language arts  
have been met. Classification  
will be changed to  
Communication Disorder.  
2/3/99

/18/1998

VINELAND ADAPTIVE BEHAVIOR SCALES  
Interview Edition - Survey Form

INDIVIDUAL INFORMATION SUMMARY  
-----

me: . DUNN, SHEA L  
dress: Mother not local - California

Sex: Female  
Grade: 2  
Race: N/A

lephone: 916-772-3512  
hool/facility: VALLEY VIEW  
cioeconomic background: N/A'

esent classification or diagnosis: LEARNING DISABLED  
-----

	Year	Month	Day
	----	-----	---
terview date:	98	12	17
rth date:	91	1	25
ronological age:	7	10	22

Respondent  
-----  
Name: VALERIE DUNN  
Sex: Female  
Relationship: MOTHER

Interviewer  
-----  
Name: PEGGY A. REGL  
Sex: Female  
Position: DIAGNOSTICIAN

ason for the interview: PARENTAL REQUEST (MOTHER)  
-----

her information:  
-----

her test data  
-----

Intelligence:

Achievement:

Adaptive  
behavior:

Other tests:

1/1998

# VINELAND ADAPTIVE BEHAVIOR SCALES

Interview Edition - Survey Form

## ADAPTIVE BEHAVIOR STANDARD SCORE SUMMARY - NATIONAL NORMS

DUNN, SHEA L  
Female  
Date: 1/25/91  
Biological age: 7-10

Interview date: 12/17/98  
Interviewer: PEGGY A. REGL  
Respondent: VALERIE DUNN

### DOMAIN SCORE SUMMARY

MAIN	RAW SCORE	STANDARD SCORE	BAND OF ERR 90% CONF.	PERCENTILE RANK	STANINE	ADAPTIVE LEVEL	AGE EQUIV
Communication	101	86	79 - 93	18	3	Adequate	6-11
Living Skills	115	85	78 - 92	16	3	Adequate	6-8
Adaptation	93	97	88 - 106	42	5	Adequate	7-4
	SUM	268					
ADAPTIVE BEHAVIOR COMPOSITE		86	81 - 91	18	3	Adequate	7-0

### SUBDOMAIN SCORE SUMMARY

MAIN	SUBDOMAIN	RAW SCORE	ADAPTIVE LEVEL	AGE EQUIV
Communication	Receptive	26	Adequate	7-10
	Expressive	55	Mod Low	6-1
	Written	20	Adequate	7-3
Living Skills	Personal	65	Mod Low	5-8
	Domestic	24	Adequate	8-10
	Community	26	Mod Low	6-5
Adaptation	Interpersonal Relationships	42	Adequate	7-0
	Play and Leisure Time	26	Adequate	6-8
	Coping Skills	25	Adequate	7-11

18/1998

VINELAND ADAPTIVE BEHAVIOR SCALES  
Interview Edition - Survey Form

ADAPTIVE BEHAVIOR DOMAIN ANALYSIS - NATIONAL NORMS

by: DUNN, SHEA L

Chronological age: 7-10

DOMAIN STRENGTHS AND WEAKNESSES:  
Standard Score and Mean Differences

DOMAIN	STANDARD SCORE	STAND SCORE/ MEAN DIFF	STRENGTH/ WEAKNESS	SIGNIFICANCE LEVEL	UNUSUAL DIFFERENCE
Communication	86	- 3		Non-signif	Not Unusual
Daily Living Skills	85	- 4		Non-signif	Not Unusual
Socialization	97	+ 8		Non-signif	Not Unusual
SUM	268				
MEAN STANDARD SCORE	89.3				

DOMAIN STANDARD SCORE DIFFERENCES:  
Pairwise Comparisons

DOMAINS	STAND SCORE DIFFERENCES	SIGNIFICANCE LEVEL	UNUSUAL DIFFERENCE
Communication > Daily Living Skills	1	Non-signif	Not Unusual
Communication < Socialization	11	Non-signif	Not Unusual
Daily Living Skills < Socialization	12	Non-signif	Not Unusual

DOMAIN STANDARD SCORE DIFFERENCES:  
Range of Scores

DOMAINS	STAND SCORE DIFFERENCE	SIGNIFICANCE LEVEL	UNUSUAL DIFFERENCE
Lowest Domain Standard Score: Socialization	12	Non-signif	Not Unusual
Highest Domain Standard Score: Daily Living Skills			

15/1998

VINELAND ADAPTIVE BEHAVIOR SCALES  
Interview Edition - Survey Form

INDIVIDUAL INFORMATION SUMMARY  
-----

Name: Dunn, Shea Lynn  
Address:

Sex: Female

Grade: 2

Race: N/A

Address: Roy, UT 84067

Telephone: 731-3139

School/facility: Valley View Elem.

Socioeconomic background: N/A

Present classification or diagnosis: Learning Disabled  
-----

	Year	Month	Day
	----	-----	----
Interview date:	98	12	15
Birth date:	91	1	25
Chronological age:	7	10	20

Respondent  
-----

Name: Cory Dunn

Sex: Male

Relationship: Father

Interviewer  
-----

Name: Peggy A. Regl

Sex: Female

Position: Diagnostician

Reason for the interview: Parent (Mother) requested reevaluation. Shea was  
----- tested in 1997.

Other information:  
-----

Other test data  
-----

Intelligence:

Achievement:

Adaptive  
behavior:

Other tests:

12/15/1998

VINELAND ADAPTIVE BEHAVIOR SCALES  
Interview Edition - Survey Form

ADAPTIVE BEHAVIOR STANDARD SCORE SUMMARY - NATIONAL NORMS  
-----

Name: Dunn, Shea Lynn  
Sex: Female  
Birth date: 1/25/91  
Chronological age: 7-10

Interview date: 12/15/98  
Interviewer: Peggy A. Regl  
Respondent: Cory Dunn

DOMAIN SCORE SUMMARY

DOMAIN	RAW SCORE	STANDARD SCORE	BAND OF ERR 90% CONF.	PERCENTILE RANK	STANINE	ADAPTIVE LEVEL	AGE EQUIV
Communication	99	82	75 - 89	12	3	Mod Low	6-8
Family Living Skills	113	82	75 - 89	12	3	Mod Low	6-6
Socialization	89	92	83 - 101	30	4	Adequate	6-7
	SUM	256					
ADAPTIVE BEHAVIOR COMPOSITE		80	75 - 85	9	2	Mod Low	6-7

SUBDOMAIN SCORE SUMMARY

DOMAIN	SUBDOMAIN	RAW SCORE	ADAPTIVE LEVEL	AGE EQUIV
Communication	Receptive	26	Adequate	7-10
	Expressive	53	Mod Low	5-6
	Written	20	Adequate	7-3
Family Living Skills	Personal	65	Mod Low	5-8
	Domestic	24	Adequate	8-10
	Community	24	Mod Low	6-1
Socialization	Interpersonal Relationships	42	Adequate	7-0
	Play and Leisure Time	24	Mod Low	5-6
	Coping Skills	23	Adequate	7-1



15/1998

VINELAND ADAPTIVE BEHAVIOR SCALES  
Interview Edition - Survey Form

ADAPTIVE BEHAVIOR DOMAIN ANALYSIS - NATIONAL NORMS  
-----

e: Dumm, Shea Lynn

Chronological age: 7-10

DOMAIN STRENGTHS AND WEAKNESSES:  
Standard Score and Mean Differences

DOMAIN	STANDARD SCORE	STAND SCORE/ MEAN DIFF	STRENGTH/ WEAKNESS	SIGNIFICANCE LEVEL	UNUSUAL DIFFERENCE
-----	-----	-----	-----	-----	-----
munication	82	- 3		Non-signif	Not Unusual
ly Living kills	82	- 3		Non-signif	Not Unusual
ialization	92	+ 7		Non-signif	Not Unusual
SUM	256				
3AN					
VDARD SCORE	85.3				

DOMAIN STANDARD SCORE DIFFERENCES:  
Pairwise Comparisons

DOMAINS	STAND SCORE DIFFERENCES	SIGNIFICANCE LEVEL	UNUSUAL DIFFERENCE
-----	-----	-----	-----
munication = Daily Living Skills	0	Non-signif	Not Unusual
munication < Socialization	10	Non-signif	Not Unusual
y Living Skills < Socialization	10	Non-signif	Not Unusual

DOMAIN STANDARD SCORE DIFFERENCES:  
Range of Scores

DOMAINS	STAND SCORE DIFFERENCE	SIGNIFICANCE LEVEL	UNUSUAL DIFFERENCE
-----	-----	-----	-----
est Domain Standard Score: ocialization			
	10	Non-signif	Not Unusual
st Domain Standard Score: ommunication			

15/1998

VINELAND ADAPTIVE BEHAVIOR SCALES  
Interview Edition - Survey Form

INDIVIDUAL INFORMATION SUMMARY  
-----

Name: Dunn, Shea Lynn  
Address:

Sex: Female  
Grade: 2  
Race: N/A

Roy, UT 84067  
Telephone: 731-3139  
School/facility: Valley View Elem.  
Socioeconomic background: N/A

Present classification or diagnosis: Learning Disabled  
-----

	Year	Month	Day
	----	-----	---
Interview date:	98	12	15
Birth date:	91	1	25
Chronological age:	7	10	20

Respondent  
-----  
Name: Cory Dunn  
Sex: Male  
Relationship: Father

Interviewer  
-----  
Name: Peggy A. Regl  
Sex: Female  
Position: Diagnostician

Reason for the interview: Parent (Mother) requested reevaluation. Shea was  
----- tested in 1997.

Other information:  
-----

Other test data  
-----

Intelligence:

Achievement:

Adaptive  
behavior:

Other tests:

Test Name	Raw Score	W	Age Equiv.	Grade Equiv.	RMI	SS	PR
READ WRITTEN	---	467	7-3	1.7	73/90	92	30
LANGUAGE			(E) 6-11	1.4	-1 SEM	89	23
			(D) 7-8	2.3	+1 SEM	95	37
ILLS (E Dev)	---	454	7-2	1.7	68/90	89	23
			(E) 6-9	1.4	-1 SEM	86	18
			(D) 7-8	2.1	+1 SEM	92	30
Word Attack	8	477	7-9	2.1	88/90	99	47
			(E) 7-2	1.6	-1 SEM	95	37
			(D) 8-6	3.0	+1 SEM	103	58
Reading Vocabulary	4	454	6-9	1.4	53/90	86	18
			(E) 6-4	1.1	-1 SEM	83	13
			(D) 7-3	1.8	+1 SEM	89	23
Quantitative Concepts	16	446	6-9	1.4	53/90	84	14
			(E) 6-2	1.0	-1 SEM	79	8
			(D) 7-4	1.9	+1 SEM	89	23
IC READING	---	464	7-7	2.0	82/90	96	40
ILLS			(E) 7-2	1.6	-1 SEM	93	32
			(D) 8-1	2.5	+1 SEM	99	47
ING	---	455	7-1	1.6	58/90	89	23
PREHENSION			(E) 6-9	1.3	-1 SEM	86	18
			(D) 7-6	2.0	+1 SEM	92	30
IC MATH	---	448	7-0	1.5	61/90	85	16
LS			(E) 6-7	1.2	-1 SEM	81	10
			(D) 7-6	2.0	+1 SEM	89	23

EMATICS  
ONING

Use scores from Test 25: Applied Problems

COMPUSCORE FOR THE WJ-R 3.0  
12/14/1998 01:07 pm  
Norms Based on Age

=====

name: SHEA LYNN DUNN

ID:

Page: 1

=====

sex: F  
Examiner: PEGGY A. REGL  
Testing Date: 12/08/1998  
Birth Date: 01/25/1991  
Age: 7 years 0 months  
Grade Placement: 2.3  
Years Retained:  
Years Skipped:  
Years of Schooling: 2.3

School/Agency: VALLEY VIEW ELEM.  
Teacher/Dept: DANIELLE FRANKS  
City: ROY State: UT  
Adult Subjects  
Education:  
Occupation:  
Other Info:  
Glasses: No Used: No  
Hearing Aid: No Used: No

-----

Test Name	Raw Score	W	Age Equiv.	Grade Equiv.	RMI	SS	PR
-----------	-----------	---	------------	--------------	-----	----	----

-----

=====

Form A was used to obtain Achievement Scores

=====

2. Letter-Word Identification	26	450	(E) 7-6 (D) 7-2 (D) 7-10	1.9 1.6 2.3	75/90	95 92 98	36 30 45
						-1 SEM +1 SEM	
3. Passage Comprehension	11	456	(E) 7-4 (D) 7-0 (D) 7-8	1.7 1.5 2.2	66/90	93 89 97	33 23 42
						-1 SEM +1 SEM	
4. Calculation	8	450	(E) 7-2 (E) 6-10 (D) 7-8	1.6 1.3 2.2	68/90	89 84 94	24 14 34
						-1 SEM +1 SEM	
5. Applied Problems	21	454	(E) 6-7 (E) 5-11 (D) 7-2	1.4 K.8 1.8	55/90	83 78 88	13 7 21
						-1 SEM +1 SEM	
6. Dictation	17	459	(E) 7-2 (E) 6-9 (D) 7-9	1.6 1.4 2.2	73/90	91 86 96	27 18 39
						-1 SEM +1 SEM	
7. Writing Samples	13-U	475	(E) 7-3 (E) 7-0 (D) 7-8	1.7 1.5 2.5	73/90	93 90 96	31 25 39
						-1 SEM +1 SEM	
ROAD READING	---	453	(E) 7-4 (E) 7-1 (D) 7-8	1.8 1.5 2.2	71/90	93 90 96	33 25 39
						-1 SEM +1 SEM	
ROAD MATH (Gq)	---	452	(E) 6-11 (E) 6-6 (D) 7-6	1.5 1.2 2.0	61/90	84 80 88	14 9 21
						-1 SEM +1 SEM	

# INDIVIDUAL TEST RECORD

by LLOYD M. DUNN & LEOTA M. DUNN

## FORM L

NAME Dunn Shea  SEX M (F)  
(last) (first) (middle initial) (circle)  
 HOME ADDRESS \_\_\_\_\_ HOME PHONE \_\_\_\_\_  
 SCHOOL Valley View Elementary GRADE 2nd  
(or agency) PLACEMENT (or education)  
 TEACHER Sanchez EXAMINER S. Griffin  
(or counselor)  
 LANGUAGE OF THE HOME: ☒ Standard English; ☐ Other \_\_\_\_\_  
(specify foreign language or type of English dialect spoken)

### Date & Age Data

	Year	Month	Day
Date of testing	<u>1998</u>	<u>11</u>	<u>16</u>
Date of birth	<u>1991</u>	<u>1</u>	<u>25</u>
Chronological age	<u>7</u>	<u>11</u>	<u>21*</u>

\*If the number of days exceeds 15, add a month to the age (see Part I of the Manual).

### Notice to Users

The PPVT-R is not intended for use in situations where truth-in-testing legislation stipulates that copies of test items and correct responses be distributed to subjects, parents, or the general public. Such disclosures may make the norms meaningless in future testing.

### Reason for Testing (may include referral source and person authorizing testing)

Requested on IEP

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**3S** Published by American Guidance Service, Inc., 4201 Woodland Road, Circle Pines, Minnesota 55014-1796; toll free 800-328-2560. For additional forms, call or write and ask for item 2002 (25 per package)

## Test Scores

Mark the obtained standard score equivalent or scale. Then draw a heavy, straight, vertical line through the three obtained deviation-type test. Depending upon the obtained standard score, s a band on both sides of the vertical line, us schedule to the right. An example is given in Fig of the Manual.

Raw score ..... 87  
(from page 4)

Standard score equivalent ..... 87  
(from Table 1, Appendix A)

Percentile rank ..... 25  
(from Table 3, Appendix A)

Stanine ..... 4  
(from Table 3, Appendix A)

Age equivalent ..... 7-0  
(from Table 4, Appendix A)

EXTREMELY LOW SCORE

### Data from Other Tests

Test	Date	Results
PPVT-R FORM M		

### Observations

Briefly describe the subject's test behavior, such as interest in task, quickness of response, sig perseverance, work habits, etc.

The items on this test are being pre-taught at  
Scotch Rites so the test results are not  
valid.

Name Shea Lynn Dunn Sex F  
 School Valley View Elem. Grade 2.3  
 Examiner Peggy A. Regi, M.Ed. Handedness R-H

# WISC-III

## Wechsler Intelligence Scale for Children - Third Edition

Subtests	Raw Scores	Scaled Scores					
Picture Completion	06		3		3		
Information	07	6		6			
Coding	27		4				
Similarities	08	8		8			
Picture Arrangement	07		5		5		
Arithmetic	11	7				7	
Block Design	10		6		6		
Vocabulary	15	8		8			
Object Assembly	09		5		5		
Comprehension	05	2		2			
(Symbol Search)	-		(-)				
(Digit Span)	11	(10)				10	
(Mazes)	-		(-)				
Sum of Scaled Scores		31	23	24	19	17	
		Verbal	Perfor.	VC	PO	FD	PS

Full Scale Score  
**54**

OPTIONAL

Can't re-phrase  
Often forgets cues

Can't tie shoes  
Known BLD  
phone. #

	Year	Month	Day
Date Tested	98	12	04
Date of Birth	91	01	25
Age	7	10	12

-15 (100) + 15  
85 — 115  
Avg

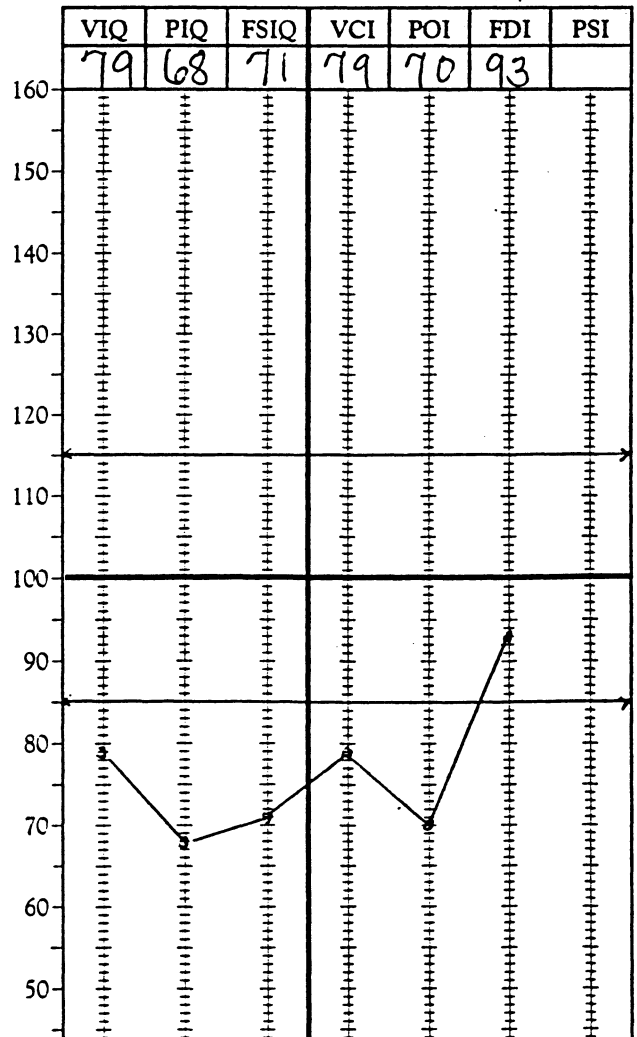
	Score	IQ/ Index	%ile	95% Confidence Interval
Verbal	31	79	8	74-86
Performance	23	68	2	63-79
Full Scale	54	71	3	67-78
VC	24	79	8	73-87
PO	19	70	2	65-81
FD	17	93	32	85-103
PS				-

### Subtest Scores

Verbal							Performance						
	Inf	Sim	Ari	Voc	Com	DS	PC	Cd	PA	BD	OA	SS	Mz
	6	8	7	8	2	10	3	4	5	6	5		
19	•	•	•	•	•	•	•	•	•	•	•	•	•
18	•	•	•	•	•	•	•	•	•	•	•	•	•
17	•	•	•	•	•	•	•	•	•	•	•	•	•
16	•	•	•	•	•	•	•	•	•	•	•	•	•
15	•	•	•	•	•	•	•	•	•	•	•	•	•
14	•	•	•	•	•	•	•	•	•	•	•	•	•
13	•	•	•	•	•	•	•	•	•	•	•	•	•
12	•	•	•	•	•	•	•	•	•	•	•	•	•
11	•	•	•	•	•	•	•	•	•	•	•	•	•
10	•	•	•	•	•	•	•	•	•	•	•	•	•
9	•	•	•	•	•	•	•	•	•	•	•	•	•
8	•	•	•	•	•	•	•	•	•	•	•	•	•
7	•	•	•	•	•	•	•	•	•	•	•	•	•
6	•	•	•	•	•	•	•	•	•	•	•	•	•
5	•	•	•	•	•	•	•	•	•	•	•	•	•
4	•	•	•	•	•	•	•	•	•	•	•	•	•
3	•	•	•	•	•	•	•	•	•	•	•	•	•
2	•	•	•	•	•	•	•	•	•	•	•	•	•

### IQ Scores

### Index Scores (Optional)



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 HARCOURT BRACE JOVANOVIICH, INC.



Tab 5

JOHN WALSH  
Attorney for Plaintiff  
2319 S. Foothill Drive  
Salt Lake City, Utah 84109  
Telephone: (801) 467-9700

SECOND DISTRICT COURT, OGDEN

STATE OF UTAH

-----ooOoo----

CORY DUNN : AFFIDAVIT OF MILTON HILL  
Plaintiff, : Case No. 984901556 DA  
v. : Judge Parley R. Baldwin  
VALERIE DUNN :  
Defendant. :

-----ooOoo-----

STATE OF UTAH )  
 ) ss.  
COUNTY OF WEBER )

MILTON HILL, being first duly sworn,  
deposes and testifies as follows:

1. I am acquainted with both the plaintiff and  
the defendant in the above case. I have personal knowledge  
of the following facts.

*Not in et recd.*



August 23, 1998

Jon Walsh  
2319 S. Foothill Drive  
Salt Lake City, Utah  
84109

To Whom It May Concern:

On or about August 15, 1997 I was in the Store and heard Valerie Dunn say she would "do Rick right on the front end" Rick Jensen was our Store Director at the time. Valerie made it clear to everyone that she would do anything or anyone to move up in the Company, her goal was to become a Store Director.

Around that same time, she was in the safe room, undid her blouse in front of Rick, and asked him "What do you think of these boss?" Rick was so embarrassed he did not say anything and walked out of the safe room. Later that same day he told me what had happened.

About July 1997, Valerie and I had a run in; she accused me of sexual harassment this is what occurred:

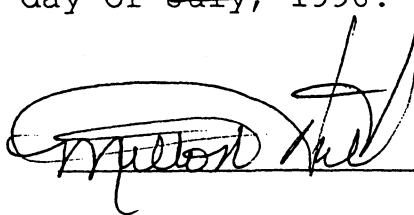
Rick Jensen was on vacation and during that time I had left work early a few of those days. When Rick came back from vacation I was up front and over heard her tell Rick that while he was on vacation, that "Milton took a mini-vacation" Well I am second in command in that store and what time I leave is really none of her concern so I told her that it was none of her business what time I leave and to mind her own business. She told me "I am sick of your little-ass and I will get you." And the tension between us got worse and worse. I stayed completely away from her. Well, in October 1997 she called the personnel Director Randy Johnson and told him that I was sexually harassing her. She involved Randy, Sherry Wing the District Manager, Gary Nay the Nonfoods Supervisor and Bob Searle head of Security. I was called in to give my version of the incident. After meeting with all of these people, they concluded that she was nothing but a "troublemaker." They met with her the next morning and that afternoon Randy Johnson came to the store and told me not to worry about anything because they all knew she was lying. Valerie is a bitter person and will do anything to further her career.

All of the above incidents above and in my wife's statement, happened in a short amount of time from November 1996 until she quit in May 1998. In a year and a half, she caused all these problems. Out of spite and the drive to get to the top no matter whom she stepped on along the way.

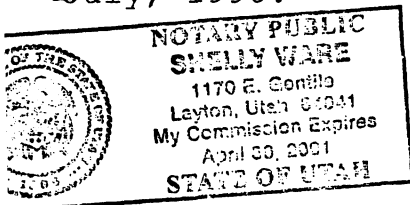
Sincerely,

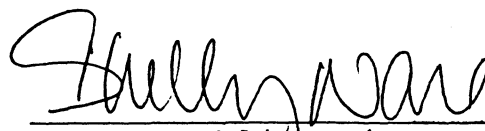
Milton Hill  
Nonfoods Manager  
Smith's Food and Drug

DATED this 24 day of ~~July~~<sup>AUGUST</sup>, 1998.

  
\_\_\_\_\_

~~July~~<sup>AUGUST</sup> SUBSCRIBED AND SWORN to before me this 24 day of ~~July~~<sup>AUGUST</sup>, 1998.



  
\_\_\_\_\_  
Notary Public  
Residing at: Canyon, UT

My Commission Expires:

April 30, 2001

Tab 6

JOHN WALSH  
Attorney for Plaintiff  
2319 S. Foothill Drive  
Salt Lake City, Utah 84109  
Telephone: (801) 467-9700

SECOND DISTRICT COURT, OGDEN

STATE OF UTAH

-----ooOoo----

CORY DUNN : AFFIDAVIT OF Amy Hill  
Plaintiff, : Case No. 984901556 DA  
v. : Judge Parley R. Baldwin  
VALERIE DUNN :  
Defendant. :

-----ooOoo-----

STATE OF UTAH )  
 ) ss.  
COUNTY OF WEBER )

Amy Hill, being first duly sworn,  
deposes and testifies as follows:

1. I am acquainted with both the plaintiff and  
the defendant in the above case. I have personal knowledge  
of the following facts.

Not in court?

August 23, 1998

John Walsh  
2319 S. Foothill Drive  
Salt Lake City, Utah 84109

To Whom It May Concern:

The first time I met the Defendant Valerie Dunn was on or about December 15, 1996. She was a new employee in my husbands department and wanted her and her husband to ride with us to the Christmas party since she did not know anyone. She showed up at our door without her husband. We took her to the Christmas party where she became extremely intoxicated which is not uncommon at a company Christmas party. However, there were other things that occurred that I found totally inappropriate. She approached Clint Colvin the husband of a checker at her work and kissed him on the mouth. Kristy Colvin knew that Valerie rode with us and approached me and told me what had happened and to keep her away from her. Mike Voss another checker also told me that Valerie grabbed his genitals. My husband and I finally told her she had enough to drink, made her stop, and took her home. As time progressed Valerie worked for my husband and was trying to become a Nonfoods manager. She would interview for these positions and was consistently passed over. She began to blame this on my husband and claimed he was "harassing" her. She took these claims to the Personnel Director Randy Johnson. She caused many problems for him in her unfounded claims. Nothing was ever done because everyone seen the incident for what it was, a personal vendetta. However, she caused a lot of speculations and rumors with her vengeance. Valerie wanted to move up in the company and she commented on more than one occasion that she would do "whatever" it takes. Unable to get into a Nonfoods Manager position Valerie moved to a Customer Service Manager on the front end. This created a situation where I was her trainer, as I am the District I trainer over all Customer Service Managers. During this time, Valerie called the Personnel Director Randy Johnson again saying that because of what had happened between her and my husband that I was trying to prevent her from being promoted to an Assistant Manager. She fabricated a story telling him that while training another Customer Service Manager Jenny Bergen. I told Jenny that I did not think she did her job and that she would never be promoted. When I confronted Jenny she denies ever having said anything to Valerie and claims Valerie made the whole thing up. So like my husband I was called into the Personnel Directors office on lies made up by Valerie for her own gain. Again these claims were unfounded and Randy said he was talking to me out of policy not because he believed that the incident had happened. He referred to Valerie as a "troublemaker". While a Customer Service Manager she repeatedly told others she would do "whatever it took" to be promoted to an Assistant Manager. Throughout the time I was Valerie's trainer from July 1997 to May 1998, other Customer Service Managers discussed things with me on her behavior that was considered inappropriate.

- On or about September 1997 Valerie was in the safe room with Carol (another Customer Service Manager) and Rick Jensen (the Store Director at the time) it was nifty-fifties week and Valerie was dressed in a shirt that had a zipper down the front. During a conversation that took place, Valerie proceeded to unzip the shirt in front of the Store Director. Later, after the incident once the Store Director was working in another location he told me of the incident and said he didn't know what to do he was afraid Valerie was going to get him into trouble and was glad he was moved out of that store. Valerie made comments to several people one being Larry Wall the Assistant Nonfoods manager, about how she wanted to "do Rick right on the front-end". She even made comments to Rick's wife Colette Jensen about Rick. Colette told me that Valerie was a "very dangerous person." After Rick was transferred from that store he would sometimes shop there, he lived close by. On more than one occasion he told me that he couldn't go in there anymore because Valerie would not leave him alone. He said that his wife had told him to stay away from her. He also said "she scares me, that woman is a psycho, she won't friggin' leave me alone." He also said she would do or say whatever it took to be promoted even if that meant getting someone into trouble

or blackmailing them. The personnel Director commented that " people like Valerie cause trouble until they get what they want."

- On or about December 20, 1997 was another Store Christmas party. Valerie had a pre-party at her home in Roy and supplied alcohol for underage baggers from her store. I was told by Jenny Bergen that her husband was very upset by this and even more so when one of these children became sick because of becoming intoxicated.
- A few days before Memorial Day Valerie left a note in the safe for the Store Director Ron Thompson stating she couldn't handle it anymore and that she was quitting. This was a holiday week and caused a lot of stress for the store. About a week and a half after this Steve McBride the Assistant was doing payroll in the computer and stumbled upon a vacation check under Assistant wages the Valerie had put in for herself by using his employee number and password. He deleted this and the check was never sent through to payroll. Had this not been caught Valerie would have stolen around \$800.00 from the company. The following week Valerie called the store to have her friend in the photo lab get the check for her. Pam the Service Booth manager, who knew of the incident, paged Steve McBride to talk to her. Valerie then hung up to avoid talking to him.

In the time that I have known Valerie, I have seen a selfish, vindictive and dishonest person. I do not believe the values and morals she displays are suitable for young children. She will do whatever benefits her with no regards to how she may harm others whether it is someone's career, their marriage or their personal safety. Valerie Dunn uses people, lies for personal gain and does whatever is most beneficial to her with no regard to what is morally right or whom she may harm along the way.

AMY HILL

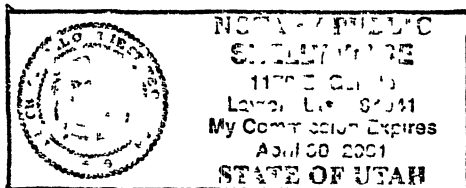
AH



DATED this 24<sup>th</sup> day of August, 1998.

Darryl P. Hill

August  
July, 1998. SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of



Heather Ware  
Notary Public  
Residing at: Carleton, UT

My Commission Expires:  
April 30, 2001